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In The
Supreme Court of the United States

ROBERT POHN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

GLEN G. REID, JR.
WYATT, TARRANT & COMBS, LLP
1715 AARON BRENNER DR., SUITE 800
MEMPHIS, TN 38120
901-537-1000

Counsel for Petitioner

September 2, 2008

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED FOR REVIEW

I. Whether a Due Process violation occurs when the Government obtains an *ex parte* order tolling a criminal statute of limitations pursuant to 18 U.S.C. § 3292 (i) without supporting its application with anything of evidentiary value and/or (ii) without disclosing to the trial judge its knowledge that the legal authority upon which it requests evidence located in a foreign country is not effective and that the foreign country has already denied the request.

II. Whether, under the Sixth Amendment speedy trial analysis established in *Barker v. Wingo*, 407 U.S. 514 (1972), a finding in a criminal defendants' favor on each of the relevant factors requires dismissal of an indictment, or whether a court may attempt to cure the violation by promptly conducting a trial.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES v

PETITION FOR WRIT OF *CERTIORARI* 1

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 10

I. THIS COURT HAS NEVER REVIEWED THE APPLICATION OF 18 U.S.C. § 3292 OR THE APPROPRIATE STANDARDS FOR GOVERNMENT CONDUCT IN SEEKING AN *EX PARTE* TOLLING ORDER UNDER § 3292, AND THIS CASE PRESENTS AN APPROPRIATE VEHICLE FOR RESOLVING THESE IMPORTANT ISSUES OF FEDERAL LAW. 10

A. The Sixth Circuit's opinion allows the Government to support an application for tolling under 18 U.S.C. § 3232 without presenting reliable evidence. 11

B. The Sixth Circuit's opinion allows the Government to obtain an *ex parte* tolling order without making full and complete disclosure of all material facts. 14

II. THE LOWER COURTS HAVE DECIDED THE SIXTH AMENDMENT SPEEDY TRIAL ISSUES IN THIS CASE IN A WAY THAT CONFLICTS WITH PREVIOUS DECISIONS OF THIS COURT. 16

CONCLUSION 22

APPENDIX

Appendix A: Opinion of the United States Court of Appeals for the Sixth Circuit (Filed June 6, 2008) . . . . . App. 1a

Appendix B: *United States of America v. Robert Bohn*, Criminal No. 02-20165 (W.D. Tenn.), Order Denying Defendant Bohn's Renewed Motion for Speedy Trial and Motion to Dismiss (Filed 8/16/05) (Docket Entry No. 609) . . . . . App. 30a

Appendix C: Order Denying Petition for Rehearing (Filed August 4, 2008) . . App. 39a

Appendix D:

U.S. Const. amend. V . . . . . App. 41a

U.S. Const. amend. VI . . . . . App. 41a

18 U.S.C. § 3292 ..... App. 42a

Appendix E: Nonjury Trial Proceedings Before the Honorable Bernice B. Donald, Judge (September 22, 2005) ..... App. 44a

Appendix F: Order on Motion of the United States for Suspension of Limitations to Obtain Foreign Evidence Pursuant to Title 18, Unites States Code, Section 3292 (Docket Entry No. 447) ..... App. 53a

Appendix G: Ex Parte Motion of the United States for Suspension of Limitations to Obtain Foreign Evidence Pursuant to Title 18, United States Code, Section 3292 (including Exhibit A, MLAT Requests for Assistance and Exhibit B, Order Barbados High Court of Justice, March 18, 1998) (Docket Entry No. 548) ..... App. 56a

TABLE OF AUTHORITIES

Cases

Barker v. Wingo,
470 U.S. 514 (1972) ..... *passim*

Bridges v. United States,
346 U.S. 209 (1953) 10

Doggett v. United States,
505 U.S. 647 (1970) 21

Strunk v. United States,
412 U.S. 434 (1973) 17

Toussie v. United States,
397 U.S. 112 (1970) 10

United States v. Atiyeh,
402 F.3d 354 (3rd Cir. 2005) 11

United States v. Marion,
404 U.S. 307 (1971) 10, 19, 21

United States v. Meador,
138 F.3d 986 (5th Cir. 1998) 11, 12

United States v. Trainor,
376 F.3d 1325 (11th Cir. 2004) 12, 13, 14

United States v. Titterington,
374 F.3d 453 (6th Cir. 2004) 6

Constitutional Provisions

U.S. Const. amend. V ..... *passim*

U.S. Const. amend. VI ..... *passim*

Statutes

18 U.S.C. § 3292 ..... *passim*

28 U.S.C. § 1254 2

PETITION FOR WRIT OF *CERTIORARI*

Petitioner, Robert Bohn, respectfully petitions for a writ of *certiorari* to review the Opinion of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinions and orders entered in the case are:

(1) *United States of America v. Richard Titterington, et al.* 354 F.Supp.2d 778 (W.D. Tenn. 2005), Order Denying Defendants' Motions to Dismiss the Indictment (dkt. #'s.169 & 393); And Granting Defendants' Request For A Hearing (Docket Entry No. 458)

(2) *United States of America v. Robert Bohn*, Criminal No. 02-20165 (W.D. Tenn.), Ruling Denying Motion to Dismiss (§ 3292 Motion) (Transcript 9/22/05) (Docket Entry No. 737) (Reproduced in Appendix)

(3) *United States of America v. Robert Bohn*, Criminal No. 02-20165 (W.D. Tenn.), Order Denying Defendant Bohn's Renewed Motion For Speedy Trial and Motion to Dismiss (filed 8/16/05), (Docket Entry No. 609) (Reproduced in Appendix)

(4) The United States Court of Appeals for the Sixth Circuit filed an Opinion on June 6, 2008, affirming the conviction and sentence of Robert Bohn on racketeering, mail fraud, money laundering, and criminal forfeiture charges, but reversing a Preliminary Order of Forfeiture. [App. 1a]. The Government petitioned for rehearing of the reversal of

the forfeiture order, which was denied by the Sixth Circuit on August 4, 2008. [App. 39a].

STATEMENT OF JURISDICTION

Petitioner seeks certiorari review of an Opinion of a United States Court of Appeals. The jurisdiction of this Court is pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment V [App. 41a]

United States Constitution, Amendment VI [App. 41a]

18 U.S.C. § 3292 [App. 42a]

STATEMENT OF THE CASE

After a three year tolling of the applicable statute of limitations pursuant to 18 U.S.C. § 3292 and approximately three years of post-indictment delay, Petitioner Robert Bohn was convicted in October of 2005 of racketeering, mail fraud and money laundering.

The case against Bohn began with the January 1996 initiation of the Government's investigation of an individual named Al Moss and his company, IDM Direct Marketing ("IDM"). IDM was located in Barbados and was one of several companies selling

lottery tickets in foreign government run lotteries to individuals in the United States.

On June 27, 1996, the Department of Justice sent a "Request for Assistance in the Investigation of Alvin Moss and Others" ("Request") to the Attorney General of Barbados. [App. 61a; 63a]. The Request purported to be "pursuant to the Mutual Assistance Legislation of Barbados." [App. 61a]. Pursuant to the Request, the Government asked for "assistance from Barbados" with respect to the Government's desire to (1) search IDM's business premises; (2) obtain documents from various banks; and (3) interview various bank officers. [App. 91a-93a].

On July 12, 199 , with the assistance of the Barbados Police, the FBI executed search warrants and seized the documentary and computer records of IDM. Over the next few days, the FBI inspected the seized IDM records and copied the electronic records onto electronic media devices, which the FBI then took back to the United States. IDM initiated legal proceedings in Barbados contesting the removal of any other seized records from Barbados. The Barbados court ruled in IDM's favor and entered an order prohibiting any further removal. [App. 58a].

When the Government subsequently requested copies of the paper documents seized but not taken by the FBI, the Barbados Director of Public Prosecutions advised in a letter dated February 5, 1997 that the Treaty relied upon by the Government was not effective and that there was no legislative authority in Barbados that permitted the requested records to be provided to the United States. [Docket Entry No. 725].

Stated differently, the Treaty referenced in the Government's Request had been signed but it had not been "implemented" by either the United States or Barbados. [*Id.*] Under Barbados law, a treaty has no effect until it has been ratified and the Barbados Parliament has passed enabling legislation based upon the treaty's provisions.

On December 9, 1998, almost two years after the Government's request for documents had been rejected by the Barbados authorities, the Government presented an *ex parte* motion to the District Court, seeking suspension of the statute of limitations pursuant to 18 U.S.C. § 3292. Section 3292 provides:

> (a)(1) Upon application of the United States, filed before return of an indictment, indicating that evidence of an offense is in a foreign country, the district court before which a grand jury is impaneled to investigate the offense shall suspend the running of the statute of limitations for the offense if the court finds by a preponderance of the evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in a foreign county.
>
> * * *
>
> (d) As used in this section, the term "official request" means a letter rogatory, a request under a treaty or convention, or any other request for evidence made by a court of

> the United States or an authority of the United States having criminal law enforcement responsibility, to a court or other authority of a foreign country.

[App. 42a-43a].

The Government's motion was not verified, it was not supported by an affidavit or anything of evidentiary value, and it was presented *ex parte* even though the Government knew IDM was represented by counsel in the Barbados court proceedings.

In its motion, the Government alleged that the seized documents "were of significant evidentiary value" and that IDM was judicially contesting the removal of the documents from Barbados. [App. 58a]. The Government represented that the documents had "not been provided to U.S. law enforcement authorities pursuant to the June 27, 1996 official Letter of Request" because the Barbados court had entered an Order "sealing the records and prohibiting their removal from Barbados." [App. 58a-59a]. A certified copy of the referenced Order was attached to the Government's motion. [App. 103a]. However, the Government failed to disclose (1) that the Treaty on which the Request had been made had never been ratified by either country; (2) that the Barbados authorities had already rejected the Request; and (3) that Barbados law did not allow compliance with the Request without a valid Treaty and enabling legislation. On December 14, 1998, the District Court granted the Government's *ex parte* motion. [App. 53a].

From December 14, 1998 until May of 2002, the Government continued its investigation. On May 8, 2002, the Indictment was returned, charging 17 individuals in 88 Counts, including charges of RICO, RICO conspiracy, mail fraud and money laundering. The central theme of all counts was that IDM sold lottery tickets by using fraudulent mail promotions. Bohn was a citizen of Vanuatu and was employed by European Bank ("EUB") in Vanuatu. Bohn and other employees of EUB were indicted because IDM used EUB to clear checks drawn on U.S. bank accounts that were written to IDM for the purchase of lottery tickets.

The Indictment remained sealed until December of 2002, at which time Bohn and five co-defendants were arrested and arraigned. The other co-defendants remained at large in foreign countries. Thereafter, Bohn and the co-defendants before the District Court filed a motion to dismiss because the Indictment on its face reflected charges that were barred by the statute of limitations. The District Court granted the motion, but the Court of Appeals reversed. *United States v. Titterington*, 374 F.3d 453 (6th Cir. 2004).

From the time he was arrested on December 4, 2002 until his sentencing in February of 2007, Bohn remained either in jail or detained in the United States. At his initial appearance and at every opportunity thereafter, Bohn demanded a speedy trial. In each instance, his motions for severance and a speedy trial were opposed by the Government and denied by the District Court.

While Bohn was demanding a speedy trial, the other defendants before the District Court were

repeatedly demanding discovery of the electronic media the FBI had copied and taken after the search in Barbados. The Government delayed the discovery process for years. Written discovery requests were made as early as December of 2002, and repeated several times over the next few years. In September of 2004, almost two years after the first request, the Government admitted the existence of the electronic media, but continued its opposition to producing the electronic media in discovery. In April of 2005, the Assistant United States Attorney handling the case represented to the District Court that the Government had never been able to access the electronic media because the data was encrypted. The AUSA made this representation based upon what the FBI Case Agent represented to him. In June of 2005, the District Court held a hearing on a motion to compel production of the electronic media. At this hearing, the FBI Case Agent testified under oath and repeated her previous representation that the FBI computer experts had never been able to access the electronic media obtained from Barbados.

In July of 2005, the FBI computer experts were subpoenaed to a hearing and it was established that the Case Agent's testimony was untruthful. In fact, the FBI experts had restored the electronic media obtained from Barbados and put the media on a stand alone computer for the Case Agent to access. Further, the FBI experts testified that the restoration had taken place in 1999 – some five years before the Case Agent testified that the Government had not been able to access the information. After the revelations by the FBI computer experts, the Government finally produced a copy of the electronic media. By that time,

it was of little use to the defendants; an independent computer expert employed by the defendants testified that it would take a team of computer experts eight months or more of continuous work to restore the raw data in the databases and retrieve the information on the old software programs.

After the years long discovery dispute over the electronic media was resolved, all of the defendants before the District Court, except Bohn, agreed to monetary forfeitures and sentences of probation, waived their defenses based on defective tolling, and pleaded guilty to either one felony or one misdemeanor count.

Bohn renewed his demand for a speedy trial and motions to dismiss based upon defective tolling and denial of the Sixth Amendment right to a speedy trial. The District Court held a hearing on August 10, 2005, allowed the presentation of evidence, and then denied both motions. Although finding the Government's *ex parte* omissions "very troubling" and "problematic," the District Court denied Bohn's motion to dismiss based on defective tolling under § 3292 in a ruling from the bench. [App. 45a-51a]. Bohn's motion to dismiss based upon denial of a speedy trial was denied by written order. [App. 30a-38a]. As set forth in the written order, the District Court found in Bohn's favor on each of the factors enunciated in this Court's holding in *Barker v. Wingo*, 470 U.S. 514 (1972), but then stepped back to conclude that the prejudice suffered by Bohn was "not so extreme as to amount to a denial of due process warranting dismissal of the indictment." [App. 38a]. The District Court suggested the prejudice could be cured by assuring there was no further delay before

trial. [App. 37a]. In reaching this result, the District Court appears to have confused prejudice associated with Bohn's anxiety and concern over long pending criminal charges and the nature of his confinement from his home country with actual prejudice to his defense, such as loss of evidence.

After a three year tolling of the statute of limitations and a lengthy discovery delay attributable to misrepresentations by the FBI Case Agent, Bohn's bench trial finally commenced on September 12, 2005. The proof was completed on September 23, 2005. On October 26, 2005, the District Court announced verdicts of guilty.

From October of 2005 until February of 2007, Bohn remained detained while the District Court considered a proposed forfeiture order submitted by the Government. On February 28, 2007, Judgment was entered. After over four years of detention in the United States, Bohn was released and allowed to return to his home and family in Vanuatu.

REASONS FOR GRANTING THE WRIT

I. THIS COURT HAS NEVER REVIEWED THE APPLICATION OF 18 U.S.C. § 3292 OR THE APPROPRIATE STANDARDS FOR GOVERNMENT CONDUCT IN SEEKING AN *EX PARTE* TOLLING ORDER UNDER § 3292, AND THIS CASE PRESENTS AN APPROPRIATE VEHICLE FOR RESOLVING THESE IMPORTANT ISSUES OF FEDERAL LAW.

The Opinion of the Court of Appeals in this case sets a precedent for the Government to obtain *ex parte* orders tolling and extending the statute of limitations in criminal cases without making full and complete disclosure of all material facts and without presenting adequate supporting evidence as required by 18 U.S.C. § 3292. While this Court has long recognized the important interest of repose that statutes of limitation play in the fair and efficient prosecution of criminal cases, *see Bridges v. United States*, 346 U.S. 209, 215-216 (1953) (referring to the Wartime Suspension of Limitations Act found at 18 U.S.C. § 3287 as "an exception to a longstanding congressional 'policy of repose' that is fundamental to our society and our criminal law."); *Toussie v. United States*, 397 U.S. 112, 115 (1970) (noting that limitations are designed to "protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past."); *United States v. Marion*, 404 U.S. 307, 322 (1971) ("These statutes provide predictability by specifying a limit beyond which there is an

irrebuttable presumption that a defendant's right to a fair trial would be prejudiced."), it has never considered the application of 18 U.S.C. § 3292 to the facts of any particular case, the standards for Government conduct when it seeks to obtain an *ex parte* order under § 3292, or the Due Process implications of § 3292. This case presents a compelling opportunity for the Court to address these important issues of federal law, and proper resolution of the issues presented herein will clarify the type of evidence required for tolling of the statute of limitations in criminal cases and the appropriate sanction when the Government fails to disclose all material facts when making an *ex parte* application for tolling to a District Court.

A. The Sixth Circuit's opinion allows the Government to support an application for tolling under 18 U.S.C. § 3232 without presenting reliable evidence.

Section 3292 was enacted to balance the need to "obtain evidence from abroad and the delays this might entail, against the defendant's interest in repose if charges are not brought with reasonable promptness." *United States v. Atiyeh,* 402 F.3d 354, 365 (3rd Cir. 2005). It is "not a statutory grant of authority to extend the limitations period by three years at the prosecutors' option." *United States v. Meador*, 138 F.3d 986, 994 (5th Cir. 1998). Instead, in order to obtain a tolling order under § 3292, the Government must establish "by a preponderance of the evidence" (1) that an official request for evidence has been made by the Government to a foreign government, and (2) that it reasonably appears that

the requested evidence is in the foreign country. 18 U.S.C. § 3292(a)(1).

While § 3292 provides benefits to the Government when there are legitimate investigative delays, it also provides simple procedures the Government must follow to avoid violating a defendant's fundamental rights. As courts interpreting § 3292 have held, an *ex parte* tolling application must be supported with reliable evidence, not "mere assertions by the Government." *United States v. Trainor*, 376 F.3d 1325, 1332 (11th Cir. 2004). The requirement that reliable evidence be presented applies to both prongs of the required factual finding; the Government must present evidence that an "official request" has been made, and it must present evidence to support a finding that there is "evidence of an offense in the foreign county." 18 U.S.C. § 3292 (a)(1). As a statute suspending limitations, § 3292 must be strictly adhered to and strictly construed. *Meador*, 138 F.3d at 994.

In this case, both the District Court and the Court of Appeals failed to apply the applicable law and have allowed the order suspending the statute of limitations in this case to stand, even though no evidence was submitted by the Government to support the application.

The Government's *ex parte* application submitted to the District Court alleges that on "June 27, 1996 ... a Letter of Request was signed and forwarded ... to the Attorney General of Barbados ... ." and that the "Request was for the issuance and execution of search warrants ... ." [App. 58a]. The Government's application then asserts that approximately one

hundred forty (140) boxes of documents were seized, and that review of those documents "revealed they were of significant evidentiary value to the on going FBI investigation." [*Id.*]. However, other than the bare conclusion that the evidence was significant, there was no further description of the alleged evidence. Further, the Government's application was not sworn or verified, and it was not supported by any affidavits or evidentiary material. To the contrary, the only information submitted to the District Court that did not consist of "mere assertions by the Government," *see Trainor*, 376 F.3d at 1332, was an Order from the High Court of Justice of Barbados. [App. 103a]. According to the Government, this Barbados Order held that a previous order "sealing the records and prohibiting their removal from Barbados was dismissed." [App. 58a-59a]. This statement was nothing more than the Government's subjective and unsupported interpretation of the Order. In fact, aside from a mere reference in the case caption to a search warrant pertaining to IDM, the Order does not even mention "records" of any kind. [App. 103a]. In short, absolutely nothing of evidentiary value was offered to support the Government's allegation that evidence was located in Barbados.

Despite acknowledging the appropriate evidentiary standards for the Government's tolling application, both the District Court and the Court of Appeals accepted the unsupported allegations and explanations offered by counsel for the Government, and incorrectly held that the unsworn Request and the unexplained and otherwise ambiguous Order satisfied the Government's evidentiary burden. There was no reliable evidence submitted to the District Court to

satisfy either of the requirements of 18 U.S.C. § 3292, the Order tolling the statute of limitations was defective, and the Indictment should have been dismissed because the charges against Robert Bohn were barred by the statute of limitations.

B. The Sixth Circuit's opinion allows the Government to obtain an *ex parte* tolling order without making full and complete disclosure of all material facts.

When the Government asks for extraordinary relief in the form of an *ex parte* tolling application, "the district court is responsible for ensuring that [a defendant's] interests are protected." *Trainor*, 376 F.3d at 1332. In order for a district court to perform its task, and in order to satisfy Due Process, the Government cannot conceal or fail to disclose material facts. Yet, in this case, the Government did just that. Specifically, the Government's *ex parte* application represented that an official request had been made pursuant to the "Treaty Between the United States of America and Barbados on Mutual Assistance in Criminal Matters." [App. 63a]. This statement amounted to an implicit representation that there was a reasonable basis for the District Court to believe that the Government's Request would be honored in a reasonable period of time, thereby justifying tolling the statute of limitations. However, the Government's representation was not true. In fact, the Government failed to inform the District Court that it had known for almost two (2) years before making its Request that there really was no such "Treaty" in effect.

Further, the Government failed to inform the District Court that the Barbados Prosecutor had rejected the Government's Request and explained that there was no legal authority to honor the Request almost two (2) years prior to its *ex parte* application. The February 5, 1997, letter from Charles Leacock, Barbados Director of Public Prosecutions, stated in pertinent part as follows:

> As you know ... neither country has so far implemented [the Treaty].
>
> * * *
>
> I would appreciate it if you could let me know of any authorities (cases or articles) that address such joint law enforcement cooperation between countries in the absence of Treaty provisions.

[Docket Entry No. 725].

When the Government's material omissions were called to the attention of the District Court almost nine years later, the District Court acknowledged that the true facts should have been disclosed and that the failure by the Government to do so was "troubling" [App. 49a] and "problematic." [App. 50a]. However, the District Court dismissed the Government's omissions as immaterial to the issuance of the tolling order. [App. 51a]. On appeal, the Sixth Circuit affirmed the District Court's conclusion.

The Government's omissions in this case were clearly material and the lower courts refusal to acknowledge they were material was clearly

erroneous. When considered with its affirmation of the Government's failure to present sufficient reliable evidence to support a tolling application, the Sixth Circuit's opinion establishes a precedent whereby the Government may toll a criminal statute of limitations at its option, without evidence, with omission of material facts, and with virtually no consideration for the resulting implications on the Constitutional rights of a criminal defendant. This Court should hear this case as an opportunity to address the Due Process implications of § 3292, the evidentiary requirements for tolling, the standards for Government conduct in presenting *ex parte* tolling applications, and the appropriate remedy for a defendant in situations where the established standards are not met.

II. THE LOWER COURTS HAVE DECIDED THE SIXTH AMENDMENT SPEEDY TRIAL ISSUES IN THIS CASE IN A WAY THAT CONFLICTS WITH PREVIOUS DECISIONS OF THIS COURT.

In *Barker v. Wingo*, 470 U.S. 514 (1972), and its progeny, this Court established and refined the appropriate test for determining whether a defendant's Sixth Amendment right to a speedy trial has been violated. The factors that must be balanced in such an analysis are: (1) whether the delay was uncommonly long; (2) the reason for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) whether the delay prejudiced the defendant. *Barker*, 407 U.S. at 530. As this Court has explained, the *Barker* factors are to be considered together with such other circumstances as may be relevant, with no one factor controlling. *Id.* at 533.

According to the *Barker* Court, the balancing approach was formulated to deal with the "vague," "amorphous," and "slipping" nature of the right in question. *Id.* at 521-22. Further, given the nature of the speedy trial right, this Court has clearly held that "the only possible remedy" for a violation of that right is the dismissal of the indictment. *Id.* at 523; *see also Strunk v. United States*, 412 U.S. 434, 440 (1973) ("In light of the policies which underlie the right to a speedy trial, dismissal must remain, as *Barker* noted, 'the only possible remedy.'").

Turning to the facts of this case, on December 4, 2002, after entering the United States on a routine business trip, Robert Bohn was arrested. Upon arrest, Bohn learned for the first time that he had been charged with multiple counts of conspiracy, racketeering, mail fraud and money laundering based on events that had occurred in 1995. After consulting with his counsel, Bohn also learned that the existing sentencing guidelines provided a minimum sentence of eleven to fifteen years in prison without parole.

From his arrest on December 4, 2002, until February 6, 2003, Bohn remained in jail. After his release from jail, Bohn was detained in the United States for another 32 months before his trial in September of 2005. During this time, Bohn was prevented from returning to his home, his family and his occupation in Vanuatu. Further, Bohn was anxious and concerned about the severity of the offenses charged and the severity of the minimum sentence for the same. Indeed, Bohn expressed his anxiety by demanding a speedy trial at his initial appearance and

at every subsequent court appearance over the next three years.

While Bohn was demanding a speedy trial, his co-defendants, who were employed by IDM, were battling with the Government over production of the electronic media taken from Barbados. After several hearings, the District Court expressed displeasure with the Government's continuing delays:

> THE COURT: I hear about this every time.... And every time we come to court the government tells me we're doing this, we're doing this, but when I get to the hearing, it's always the case that this hasn't been done and we are going to do this now.

[Docket Entry No. 721 Hearing Transcript, April 15, 2005, pp. 26-27].

At the conclusion of the hearing, the District Court acknowledged that the Government's conduct was "implicating the defendant's rights to a speedy trial" [*Id.* at 45], directed the Government to stop "with these games" [*Id.* at 28], and ordered the Government to produce the electronic media within thirty days [*Id.* at 44-5].

On July 22, 2005, Bohn again renewed his motion to dismiss for violation of his Sixth Amendment right to a speedy trial. The District Court considered the *Barker* factors and correctly found in Bohn's favor with regard to every one. [App. 34a-38a]. More specifically, the District Court found that the pretrial delay was uncommonly long, that the delay was attributable to

Government misconduct, that Bohn had asserted his right to a speedy trial at every opportunity, and that Bohn had "certainly been prejudiced by the delay and conditions of confinement." [App. 38a]. The District Court's finding of prejudice by "delay and conditions of confinement" was clearly intended to reference the "anxiety and concern" Bohn endured during the period between his arrest and trial, during which time he was detained in the United States without being able to return to his family, his home, or his job. *See Marion*, 404 U.S. at 320 (discussing the anxiety associated with arrest and confinement).

However, despite its findings following the *Barker* inquiry, the District Court refused to dismiss the Indictment, holding: "the prejudice is not so extreme as to amount to a denial of due process warranting dismissal of the indictment." [App. 38a]. Instead, in weighing the prejudice, the District Court suggested the prejudice could be diminished by giving Bohn's case a prompt trial following entry of the ruling on his *Barker* motion. [App. 37a].

On appeal, the Sixth Circuit acknowledged that dismissal is the appropriate remedy for denial of the right to a speedy trial, but refused to require dismissal as the appropriate remedy for Robert Bohn. To the contrary, without citing any authority, the Sixth Circuit ruled: "Contrary to Bohn's contention, a finding in the defendant's favor on each of the four *Barker* factors does not necessarily require dismissal." [App. 14a]. In an effort to support its conclusion, the Court of Appeals reevaluated the delay and prejudice factors of *Barker*. First, the Sixth Circuit held that the Government's misconduct in the discovery process,

though "questionable," was not an intentional attempt to hinder Bohn's defense, "so the delay is not weighted as heavily *against* the government." [App. 15a] (emphasis added). With respect to the prejudice factor, the Sixth Circuit simply ignored the "anxiety and concern" form of prejudice suffered by Bohn, and found instead that Bohn's confinement from his home country did not amount to "oppressive pretrial incarceration" and that "Bohn did not present evidence of any specific prejudice to his defense." [App. 16a]. In doing so, the Court of Appeals, like the District Court, confused the different types of prejudice that the right to a speedy trial is designed to prevent.

The District Court and Court of Appeals failed to follow the law as established in *Barker v. Wingo*, 470 U.S. 514 (1972), and subsequent decisions of this Court. Recognizing that "[i]t is ... impossible to determine with precision when the [speedy trial] right has been denied," this Court established a balancing test to be determinative of the issue. *Barker* at 521, 530. Once the four *Barker* factors and other relevant circumstances have been considered and a court has made a finding of a violation, there is no stepping back to evaluate whether the prejudice was "extreme." Nor is the prejudice standard of the *Barker* analysis limited to prejudice resulting from oppressive confinement or actual prejudice to an individual's defense. Quite the opposite, this Court has long recognized that anxiety and concern accompanying public accusation and restriction on liberties are the "major evils" which the Speedy Trial Clause is intended to address:

> [T]he major evils protected against by the speedy trial guarantee exist quite apart from actual or possible prejudice to an accused's defense... Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.

Marion, 404 U.S. at 320; *see also Doggett v. U.S.*, 505 U.S. 647, 669 (Thomas, J., dissenting).

The evaluation of relevant factors and other circumstances in this case must also take into account unique features of this case. Specifically, the post-indictment delay followed a three year tolling of the statute of limitations and the seven month period in which the Indictment was sealed. Further, the post-indictment delay was caused by intentional misconduct of the Government agent in charge of the case. No circumstances relevant to the *Barker* analysis weigh in favor of the Government in the case.

The District Court's refusal to dismiss, after finding Bohn's Constitutional right to a speedy trial had been violated, flies in the face of long established precedent. On appeal, the Sixth Circuit essentially dismissed *Barker* as determinative of a speedy trial violation and read the prejudice associated with the "anxiety and concern accompanying public accusation" right out of the speedy trial analysis. A writ of *certiorari* is necessary to correct the lower courts' rulings and to

remedy the violation of Robert Bohn's Constitutional right to a speedy trial.

CONCLUSION

This case presents an excellent opportunity for the Court to address, for the first time, the important issues of evidentiary requirements, standards of Government conduct, and Due Process concerns associated with *ex parte* requests for tolling of a criminal statute of limitation pursuant to 18 U.S.C. § 3292. Further, the lower courts have decided the Sixth Amendment issues in case in such a manner that conflicts with this Court's previous decisions in *Barker v. Wingo*, 470 U.S. 514 (1972), and its progeny. For these reasons, Robert Bohn requests that the Court review this case on a writ of *certiorari*.

Respectfully submitted,

Glen G. Reid, Jr.
WYATT, TARRANT & COMBS, LLP
1715 Aaron Brenner Dr., Suite 800
Memphis, TN 38120
901-537-1000

Counsel for Petitioner

APPENDIX

APPENDIX A

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 07-5307

[Filed June 6, 2008]

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
)
v.)
)
ROBERT BOHN,)
Defendant-Appellant,)
)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION

Before SUHRHEINRICH and ROGERS, Circuit Judges; and BELL, Chief District Judge.*

* The Honorable Robert Holmes Bell, Chief United States District Judge for the Western District of Michigan, sitting by designation.

PER CURIAM. Robert Bohn appeals his conviction and sentence following a bench trial on racketeering, mail fraud, money laundering, and criminal forfeiture charges. For the reasons that follow, we affirm Bohn's conviction, but we reverse the preliminary order of forfeiture and remand for further proceedings.

I.

In 1994 the United States government began its investigation into the activities of IDM Direct Marketing ("IDM"), a company located in Barbados, that was allegedly engaged in the business of selling foreign and domestic lottery chances to customers in the United States. In July 1996 the FBI and the Barbados police executed search warrants at IDM's offices in Barbados and seized computers and business records. IDM representatives challenged the search and a Barbados court entered an order sealing the documents and preventing their removal from Barbados pending a judicial determination of the legality of the searches. On December 14, 1998, the United States government obtained an *ex parte* order suspending the statute of limitations pursuant to 18 U.S.C. § 3292 based on the difficulties it was encountering in obtaining the foreign evidence.

On May 8, 2002, a grand jury in the Western District of Tennessee returned an eighty-nine-count indictment charging seventeen individuals with racketeering in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c); RICO conspiracy in violation of 18 U.S.C. § 1962(d); mail fraud in violation of 18 U.S.C. § 1341; money laundering in violation of 18 U.S.C.

§ 1956(a)(2); and criminal forfeiture allegations pursuant to 18 U.S.C. §§ 982, 1963(a)(2). The indictment alleged that between 1989 and 1996 the defendants were involved in IDM's sale of lottery tickets to customers in the United States through the use of fraudulent mail promotions or telemarketing tactics.

Defendant Bohn was arrested on December 4, 2002. He was released from custody on February 10, 2003, on a secured bond with conditions that precluded him from leaving the United States and from returning to Vanuatu, his country of residence.

On January 9, 2003, the district court entered an order designating the case as complex pursuant to 18 U.S.C. § 3161(h)(8)(B)(ii). The effect of this ruling was to exempt the case from the time limitations of the Speedy Trial Act, 18 U.S.C. § 1361.

On April 23, 2003, the district court dismissed the indictment on the grounds that the prosecution was barred by the statute of limitations because facts supporting the suspension of the statute of limitations had not been alleged in the indictment. The judgment dismissing the indictment was reversed on appeal and the case was remanded for further proceedings. *United States v. Titterington,* 374 F.3d 453, 460 (6th Cir. 2004).

Bohn's motions to dismiss the indictment based on violations of his Fifth Amendment right to due process, 18 U.S.C. § 3292, and his Sixth Amendment right to a

speedy trial were denied. Of the seventeen named defendants, only Bohn went to trial.[1]

Bohn's bench trial commenced on September 12, 2005, and proofs were completed on September 23, 2005. On October 26, 2005, the district court entered an oral ruling finding Bohn guilty on all counts against him. Specifically, Bohn was convicted on one count of a RICO violation (Count One); one count of a RICO conspiracy (Count Two); twenty-one counts of mail fraud (Counts Four, Five, Seven, and Fifty-Five through Seventy-Two); and sixteen counts of money laundering (Counts Seventy-Three through Eighty-Eight). After the verdict the government moved for a preliminary order of forfeiture.

On February 28, 2007, Bohn was sentenced to incarceration for time served (ten weeks) and supervised release for time served (forty months), a fine of $2,000, a special assessment of $3,900, and criminal forfeiture as to Count 89. On March 6, 2007, a preliminary order of forfeiture was entered forfeiting Bohn's interest in $22,409,494.48, to be satisfied from enumerated bank accounts. Bohn timely filed this appeal.

II.

Bohn's first argument on appeal is that the district court erred in denying his motion to dismiss the

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[1] As to Bohn's sixteen co-defendants, five entered pleas of guilty or *nolo contendere* pursuant to plea agreements, seven were dismissed, and four remained at large in foreign countries.

indictment as time-barred. Bohn contends that the indictment should have been dismissed on statute of limitations grounds because the tolling order was improperly issued.

We review the district court's denial of the motion to dismiss on statute of limitations grounds *de novo* and the underlying factual findings under either an abuse of discretion or clear error standard. *United States v. Grenier*, 513 F.3d 632, 635-36 (6th Cir. 2008); *United States v. Grenoble*, 413 F.3d 569, 572 (6th Cir. 2005).

There is no question that absent an order suspending the statute of limitations, the five-year statute of limitations would have run before the indictment was returned.[2] Bohn contends that although the government obtained an order suspending the statute of limitations, the suspension order failed to comply with due process and the requirements of 18 U.S.C. § 3292, because it was *ex parte*, it was not supported by evidentiary material, it was based on a treaty that had not been ratified, and it failed to disclose material facts.

Section 3292 provides that if, before the return of an indictment, the government makes an application indicating that evidence of an offense is in a foreign

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[2] The RICO, mail fraud, and money laundering charges are governed by the five-year limitations period that applies to most non-capital offenses. *Titterington*, 374 F.3d at 455 (citing 18 U.S.C. § 3282(a)). The acts charged in the indictment that relate to Bohn occurred in 1995 and 1996, and the indictment was not filed until May 8, 2002.

country, the district court is required to suspend the statute of limitations if it finds by a preponderance of the evidence that the government has made an "official request" for such evidence and that it reasonably appears that such evidence is in such foreign country. 18 U.S.C. § 3292(a)(1).[3]

Bohn contends that the government's *ex parte* application was not permissible under the statute and violated his due process rights. The only circuits that have addressed the issue have concluded that *ex parte* applications are permissible under § 3292. *United States v. Torres,* 318 F.3d 1058, 1061 (11th Cir. 2003) ("Under § 3292, the government may apply, *ex parte,* for suspension of the statute of limitations when it seeks evidence located in a foreign country."); *United States v. Wilson,* 249 F.3d 366, 371 (5th Cir. 2001) ("An application to toll the statute of limitations under § 3292 is a preindictment, ex parte proceeding."); *DeGeorge v. U.S. Dist. Court,* 219 F.3d 920, 937 (9th Cir. 2000) (finding no basis in the statute for

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[3] Section 3292 provides in pertinent part:

> Upon application of the United States, filed before return of an indictment, indicating that evidence of an offense is in a foreign country, the district court before which a grand jury is impaneled to investigate the offense shall suspend the running of the statute of limitations for the offense if the court finds by a preponderance of the evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

18 U.S.C. § 3292(a)(1).

disallowing an *ex parte* application). We agree. There is nothing in the statute to suggest that individuals who might be affected by the suspension of the statute of limitations are entitled to notice or hearing on the government's application. *DeGeorge,* 219 F.3d at 937.

Neither does the *ex parte* nature of the application violate the Fifth Amendment's Due Process Clause. We examine procedural due process claims under a two-part analysis: first, we determine whether the interest at stake is a protected liberty or property right; second, we determine what procedures are required to protect that interest. *Singfield v. Akron Metro. Housing Auth.,* 389 F.3d 555, 565 (6th Cir. 2004) (construing the Fourteenth Amendment Due Process Clause).[4] The suspension order in this case complied with the Section 3292 requirement that the order be obtained prior to indictment. Bohn has not identified any source of a right to a fixed period of limitations prior to indictment. In the absence of an identified right, Bohn cannot state a procedural due process claim based upon the lack of notice and a hearing before the limitations period was suspended. *See United States v. Bischel,* 61 F.3d 1429, 1434-35 (9th Cir. 1995) (rejecting a due process challenge to § 3292 where the defendant failed to locate the source of any right to a fixed period of limitations); *United*

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[4] Because the language and policies of the Due Process Clauses of the Fifth and Fourteenth Amendments are essentially the same, due process cases decided under the Fourteenth Amendment provide guidance in due process cases arising under the Fifth Amendment. *Medical Mut. v. deSoto,* 245 F.3d 561, 575 (6th Cir. 2001); *Rep. of Pan. v. BCCI Holdings (Lux.) S.A.,* 119 F.3d 935, 944 (11th Cir. 1997).

States v. King, No. 98-CR-91A, 2000 WL 362026, at 21 (W.D.N.Y. Mar. 24, 2000) ("As § 3292 is a legislative modification of all federal criminal statutes of limitations and itself subject to strict limitations, ... there is no basis to find that a subject or target of a grand jury proceeding must be granted an opportunity to be heard on an application for suspension of the applicable statute."); *see also United States v. Haug*, 21 F.R.D. 22, 25 (N.D. Ohio 1957) (holding that an accused "may not complain if the statute of limitations is extended so long as the period of time originally provided therein had not run at the time of such extension" because an accused does not acquire any vested right in a statute of limitations until it has operated to bar the prosecution of the offense with which he has been charged).

Because § 3292 applications must be made before the return of an indictment, *ex parte* applications are consistent with the traditionally non-adversarial and secret nature of grand jury proceedings. *DeGeorge*, 219 F.3d at 937 (citing *United States v. Calandra*, 414 U.S. 338, 343-44 (1974)).*Ex parte* applications are also consistent with the possibility that at this pre-indictment investigative stage all of the individuals who might be affected by the suspension of the statute of limitations have not yet been identified. Finally, even when a suspension order is issued on an *ex parte* basis, a defendant has an opportunity to challenge the suspension order after the indictment is returned, as Bohn did in this case. Accordingly, we find that the *ex parte* nature of the § 3292 suspension order did not violate Bohn's right to due process.

Bohn contends that the order suspending the statute of limitations also failed to comply with the statute because it was not supported by evidentiary material. The statute requires a finding by a preponderance of the evidence that an official request has been made and that it reasonably appears that evidence of an offense is in the foreign country. Before a court can make this finding "the government has some burden to establish, as opposed to being able merely to assert without support, that the foreign evidence it seeks meets the section's requirements." *DeGeorge,* 219 F.3d at 937. The Eleventh Circuit has held that the government's submission of its application and a copy of the Department of Justice Office of International Affairs ("OIA") request was not, standing alone, sufficient to satisfy the government's burden because these documents did not contain any indicia of reliability to support the government's contention that evidence of an offense was located in a foreign country. *United States v. Trainor,* 376 F.3d 1325, 1133 (11th Cir. 2004). Although an OIA request itself was sufficient to show that an official request for evidence had been made to a foreign country, the Eleventh Circuit held that it was not sufficient to show that it was reasonably likely that evidence was in fact located in that foreign country. *Id.* at 1333-34.Bohn contends that the evidence submitted in support of the application in this case was similarly inadequate to show that it was reasonably likely that evidence of an offense was in Barbados.

Although the Eleventh Circuit required the government to provide something more than an unsworn recitation of the evidence in its possession, it did not establish a high standard of proof:

> Our reading of the § 3292 preponderance of the evidence requirement is quite broad and the Government may satisfy its burden by including a sworn or verified application containing the necessary factual information, testimony by Government officials, affidavits, declarations, exhibits, or other materials of evidentiary value. Indeed, as the district court noted, the Government's evidence could even include hearsay evidence.

Id. at 1332-33.

The evidence the government submitted in this case included not only the application and the OIA request, but also a certified copy of an order from a Barbados court relating to the issuance and execution of search warrants at the premises of IDM in Barbados. We agree with the district court that the order of the Barbados Court referring to the issuance of a search warrant provided sufficient indicia of reliability to enable the district court to find by a preponderance of the evidence that evidence of an offense was located in Barbados at the time the government filed its application. *See United States v. Titterington,* 354 F. Supp. 2d 778, 787 (W.D. Tenn. 2005).

Bohn's third contention with respect to the order of suspension is that the government's application failed to satisfy the requirements of § 3292 because it was based on a treaty that had not been ratified.

The government stated in its § 3292 application that the OIA sent a Letter of Request to the Attorney

General of Barbados for the issuance and execution of search warrants on IDM. A copy of the Letter of Request was attached to the § 3292 application. The Letter of Request indicated that the government was making a request for assistance "pursuant to the Treaty Between the United States and Barbados on Mutual assistance in Criminal Matters, signed at Bridgetown on February 28, 1996."

Although the United States and Barbados entered into a Treaty regarding assistance in criminal investigations in February 1996, the record reflects that the Treaty did not enter into force until it was ratified by both countries in 2000 or 2001. The record also reflects that the lack of ratification had been brought to the attention of the government in February 1997, before the government applied for tolling under § 3292 in December 1998.

The fact that the Treaty was not ratified does not defeat the § 3292 application because the statute only requires an "official request." For purposes of § 3292 the term "official request" is defined as "a letter rogatory, a request under a treaty or convention, or any other request for evidence made by a court of the United States or an authority of the United States having criminal law enforcement responsibility, to a court or other authority of a foreign country."18 U.S.C. § 3292(d). The district court correctly found that the OIA's Letter of Request was an official request that satisfied the requirements of § 3292(d).

Bohn contends that the § 3292 application nevertheless failed to satisfy the requirements of § 3292 because it contained material omissions and

misrepresentations. Specifically, Bohn highlights the government's failure to make the following disclosures: that the Treaty had not been ratified, that the Barbados prosecutor had previously rejected the government's production request based on the lack of legal authority, and that the government had already reviewed and copied the documents.

The district court held an evidentiary hearing on these allegations and found that the government had made a formal request for cooperation from the Barbados authorities, the Barbados authorities had in fact cooperated with the government in executing the search, and the Barbados court's order staying the proceedings was being challenged in the courts of Barbados. The district court also made a factual determination that the government had not had an opportunity to review all of the documents that were in Barbados. Although troubled by the government's failure to disclose information relating to the Treaty and the letter from the Barbados prosecutor, the district court determined, based upon her findings, that the government's omissions were not material to her issuance of the suspension order. Bohn has not shown that these factual findings were clearly erroneous or an abuse of discretion. Based upon these findings, we are satisfied that the district court properly concluded that the suspension order satisfied the requirements of due process and § 3292.

III.

Bohn's second argument on appeal is that he was denied his constitutional right to a speedy trial.

The Sixth Amendment to the United States Constitution guarantees, in pertinent part, that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend VI. We review the constitutional question of whether a defendant has been denied his constitutional right to a speedy trial *de novo,* but we review the district court's factual findings for clear error. *United States v. Brown,* 169 F.3d 344, 348 (6th Cir. 1999). In determining whether a defendant has been deprived of his Sixth Amendment right to a speedy trial we balance: "(1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) the prejudice to the defendant." *Id.* at 348 (citing *Barker v. Wingo,* 407 U.S. 514, 530 (1972)).

Bohn was arrested in December 2002 and was not tried until September 2005. This delay of more than two-and-a-half years between accusation and trial is sufficient to trigger the *Barker* inquiry. *See Brown,* 169 F.3d at 348-49 (noting that delays over one-year are presumptively prejudicial). As to the remaining three *Barker* factors, the district court found that Bohn was diligent in asserting his right to a speedy trial, that the government was responsible for some of the delay, and that Bohn was prejudiced by the delays. Nevertheless, the district court determined that neither the delay nor the prejudice was so extreme as to amount to a denial of due process warranting dismissal of the indictment.

Bohn does not contend that the district court's factual findings were erroneous. Rather, he contends that the factual findings cannot be reconciled with the district court's conclusion that there was no

constitutional speedy trial violation. Bohn contends that because the district court found in his favor on all four *Barker* factors, he was entitled to dismissal of the indictment.

Bohn misconstrues the purpose of the *Barker* factors. Contrary to Bohn's contention, a finding in the defendant's favor on each of the four *Barker* factors does not necessarily warrant dismissal of the indictment. A dismissal is required only when the court finds that a defendant's constitutional right to a speedy trial has been violated. *See Brown,* 169 F.3d at 348 ("When a defendant's constitutional right to a speedy trial has been violated, dismissal of the indictment is the only available option even when it allows a defendant who may be guilty of a serious crime to go free."). A violation of the right to speedy trial arises when "the circumstances of the case are such that further delay would endanger the values the right protects." *Barker,* 407 U.S. at 522. The *Barker* factors help focus this inquiry, but none of the four factors is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." *Id.* at 533. The *Barker* factors must be considered together with other relevant circumstances. *Id.* "In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." *Id.*

With respect to the first factor, delay, we ask whether the delay was "uncommonly long." *Doggett v. United States,* 505 U.S. 647, 651 (1992). Here, the delay attributable to the government does not include the fourteen months while the government's appeal was pending or the six months while defendant's

motion to compel discovery was under advisement. Although the delay attributable to the government still exceeded a year, the delay was not uncommonly long given the complicated nature of the conspiracy. As noted in *Barker*, "the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge."407 U.S. at 531. Moreover, different weights are assigned to different reasons for delay. *Id.* The district court found that the government was responsible for some of the discovery delays caused by the government's "questionable tactics" of misleading the court as to the availability of the information on a computer hard drive. Nevertheless, the district court found no deliberate attempt to delay the trial in order to hamper the defense, so the delay is not weighted as heavily against the government. *See id.* at 531.

The fourth *Barker* factor requires the defendant to show that "the delay caused 'actual prejudice' to his defense." *Brown*, 169 F.3d at 350.[5] "Actual prejudice is determined by examining whether the defendant has suffered (1) oppressive pretrial incarceration; (2) anxiety and concern; and (3) impairment to his defense." *Id.* "Of these forms of prejudice, 'the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.'" *Doggett*, 505 U.S. at 654 (quoting *Barker*, 407 U.S. at 532).

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[5] Although pretrial prejudice may be presumed is some cases, such as when the delay is lengthy and attributable to bad faith by the government, *Brown*, 169 F.3d at 350 (citing *Doggett*, 505 U.S. at 657), this is not such a case.

Bohn was confined in jail for ten weeks before he was released on bond. Although the conditions of his release restricted him from returning to his home country, Bohn had substantial liberty. These conditions do not amount to oppressive pretrial incarceration, and Bohn did not present evidence of any specific prejudice to his defense.

Based upon the findings of the district court, and after our *de novo* consideration of the *Barker* factors, we agree with the district court's conclusion that the delay in this case did not result in a violation of Bohn's Sixth Amendment right to a speedy trial.

IV.

Bohn's third argument on appeal is that the evidence was not sufficient to sustain the guilty verdicts on any of the charges. "In analyzing this claim 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *United States v. Rayborn,* 495 F.3d 328, 337-38 (6th Cir. 2007) (quoting *Jackson v. Virginia,* 443 U.S. 307, 319 (1979)). Under this standard "we do not weigh the evidence presented, consider the credibility of witnesses, or substitute our judgment for that of the [factfinder]." *United States v. Davis,* 177 F.3d 552, 558 (6th Cir. 1999). "'[C]ircumstantial evidence alone, if substantial and competent, may support a verdict and need not remove every reasonable hypothesis except that of guilt.'" *Rayborn,* 495 F.3d at 338 (quoting *McKenzie v. Smith,* 326 F.3d 721, 727 (6th Cir. 2003)).

A. Knowledge and Intent

Bohn contends that the evidence was insufficient to prove that he had knowledge that IDM's promotions were fraudulent or that he intended to join IDM in a mail fraud scheme.

"The elements of mail fraud are: (1) a scheme to defraud, and (2) use of the mails in furtherance of the scheme." *United States v. Brown,* 147 F.3d 477, 483 (6th Cir. 1998). "A defendant does not commit mail fraud unless he possesses the specific intent to deceive or defraud...." *United States v. Frost,* 125 F.3d 346, 354 (6th Cir. 1997). Because Bohn's RICO and money laundering convictions were also premised on mail fraud, his knowledge and intent to defraud are relevant to every count on which he was convicted. Bohn correctly asserts that the government presented no direct evidence that he read IDM's promotional materials or that he knew they were fraudulent. The specific intent to defraud, however, may be established by circumstantial evidence. *Rayborn,* 495 F.3d at 338; *United States v. Isaiah,* 434 F.3d 513, 519-20 (6th Cir. 2006). A defendant's knowledge of a particular fact may also be inferred from the defendant's deliberate ignorance or willful blindness to the existence of that fact. *United States v. Prince,* 214 F.3d 740, 761 (6th Cir. 2000); *United States v. Hoffman,* 918 F.2d 44, 46-47 (6th Cir. 1990).

IDM's promotional materials included representations that IDM would use a lottery expert with a sixty percent success record to select lottery numbers on behalf of the participants, that winnings were guaranteed up to $50,000, and that all winnings

were tax-free. Several witnesses, including Geoffrey Feldman, the outside consultant who was responsible for the content of the promotional materials, testified that the promotional materials contained false representations because that is what IDM wanted.

Bohn was President and CEO of European Bank Limited of Vanuatu ("EUB"). In 1995 IDM began using EUB to clear its customers' checks after IDM's accounts in other banks had been closed due to high chargebacks and returned checks. Lottery players would mail their payments by check to IDM in Barbados. IDM would send those checks by Federal Express either to EUB in Vanuatu, or directly to EUB's correspondent account at Marine Midland Bank in New York for deposit.

Bohn had more than a banking relationship with IDM. Bohn was also President and CEO of Atlas Corp. and PITCO. IDM used Atlas Corp. for making payments to lottery winners. IDM used PITCO for clerical work, including telex, fax, and telephone communications. An employee of IDM worked at PITCO to help sort and verify the IDM lottery checks. Fred Collier, the general manager of IDM, was listed as an authorized bank signatory for EUB, and was authorized not only to make deposits, but also to withdraw funds from EUB's Marine Midland Bank account.

Over time Marine Midland Bank developed concerns about the EUB account based on the high volume of small denomination checks, the subject matter of the checks (lottery), the routing of the checks directly from IDM, and the large number of

complaints. When Marine Midland Bank contacted Bohn regarding the large number of complaints it was receiving from individuals who had written checks to IDM and did not receive anything in return, Bohn suggested that the bank refer the customer complaints regarding IDM to EUB for handling. In an effort to reassure Marine Midland Bank about the legitimacy of IDM, Bohn also faxed the bank a sample of one of IDM's promotional letters.

When Marine Midland Bank froze EUB's account in November 1995, Bohn, as an officer of EUB, assured Marine Midland Bank that he was very familiar with IDM's business and could vouch for it. He requested Marine Midland Bank to keep the account open while EUB made representations to another bank that it had conducted appropriate inquiries as to IDM and believed that IDM conducted business in a legal, ethical, and competent manner. In the meantime EUB arranged for IDM to send the checks to Vanuatu Maritime Services, Ltd., a ship registry services organization owned by Bohn, which deposited IDM's checks into Marine Midland Bank on behalf of IDM.

Based upon the blatantly false nature of the representations in IDM's promotional materials, the degree to which Bohn and his businesses were involved in IDM's enterprise, Bohn's access to at least some of IDM's promotional literature, and the efforts Bohn took on behalf of IDM, including vouching for IDM and offering to field complaints from IDM's customers, we are satisfied that the evidence, viewed in the light most favorable to the government, was sufficient to permit a rational trier of fact to find beyond a reasonable doubt that Bohn knew or willfully

blinded himself to knowledge of IDM's fraudulent promotions and that he intended to assist IDM in the mail fraud scheme.

B. False Representations Reasonably Calculated to Deceive

Bohn contends that even if the evidence was sufficient to show intent to defraud, the evidence was not sufficient to show that any false representations were reasonably calculated to deceive.

"[A] scheme to defraud, as prohibited by the mail fraud statute, 'must involve misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension.'" *United States v. Jamieson*, 427 F.3d 394, 415 (6th Cir. 2005) (quoting *Berent v. Kemper Corp.*, 973 F.2d 1291, 1294 (6th Cir. 1992)).

Bohn contends that because the government failed to present testimony from any IDM customer who sent IDM a check as a result of any specific false statement in the promotional material, it is only speculation as to whether the person of ordinary prudence requirement has been satisfied.

Neither reliance on the misrepresentations nor the actual success of the scheme is an element of mail fraud. *United States v. Merklinger*, 16 F.3d 670, 678 (6th Cir. 1994). To be actionable, the misrepresentations must merely be "worthy of reliance or credence." *Jamieson*, 427 F.3d at 415. This is not an exacting standard. As we noted in *Jamieson*, the purpose of the "prudence and comprehension"

requirement is to ensure that the scheme was "at least minimally credible." *Id.*

Here, the government offered ample evidence from individuals associated with IDM that IDM sent out false promotional materials that were intentionally designed to target the elderly and to induce them to send IDM money. The government also presented evidence from five IDM customers. One customer testified that she sent IDM money in response to IDM's representation that she had won a great sum of money and that she had to send a fee to collect her winnings. Another testified that he sent IDM money because it looked good based upon the promises and representations about people who had won. The very purpose of IDM's false representations in its promotional materials was to induce customers to send in their money. We are satisfied that the evidence was sufficient to show that the false representations in IDM's promotional materials were reasonably calculated to deceive, whether or not the recipients were in fact deceived.

C. Evidence re Mail Fraud for Counts Fifty-Five through Seventy-Two

Bohn contends that the mail fraud charges in counts fifty-five through seventy-two should have been dismissed for failure of proof because there was no evidence that any of the checks in the Federal Express packages were fraudulently solicited. Bohn contends that because the government did not submit proofs regarding the individual checks in the Federal Express packages, there is no way to know whether the checks were sent by recipients of fraudulent promotional

materials, or whether the checks were sent in reliance on the fraudulent promotional materials.

Because neither reliance nor success of the scheme is an element of a mail fraud charge, *Merklinger,* 16 F.3d at 678, the government was not required to prove that any specific check was sent in reliance on the misrepresentations. It was sufficient for the government to show that the checks were sent through the mail as part of the overall scheme of mail fraud. The government clearly met this burden.

D. Evidence re Money Laundering for Counts Seventy-Three through Eighty-Eight

Bohn was charged in Counts seventy-three through eighty-eight with money laundering to promote mail fraud and to conceal the proceeds of that mail fraud in violation of 18 U.S.C. §§ 1956(A)(2)(a), (A)(2)(b)(1).

Bohn contends that the evidence was not sufficient to prove money laundering because the government failed to prove that he had "actual subjective knowledge" that the money used in the alleged money laundering transaction was derived from an unlawful source. *See United States v. Heaps,* 39 F.3d 479, 484 (4th Cir. 1996) (holding that the government must prove "actual subjective knowledge" and that a defendant "may not be convicted on just what he should have known").

Bohn's reliance on *Heaps* is misplaced. In this Circuit the knowledge requirements of § 1956 are construed to include instances of willful blindness. *United States v. Hill,* 167 F.3d 1055, 1067 (6th Cir.

1999). Because we have already determined that the circumstantial evidence was sufficient to show that Bohn knew about the mail fraud scheme, it follows that the evidence was also sufficient to show that Bohn knew that the money was from some form of unlawful activity. Thus, the evidence was sufficient to establish the knowledge requirements of the money laundering charges.

Bohn also contends that because the money laundering counts involve the same Federal Express shipments alleged in Counts fifty-five through seventy-two they should have been dismissed as duplicative. In support of this argument Bohn again relies on the Fourth Circuit's opinion in *Heaps*, which held that the defendant could not be convicted of money laundering based simply upon his receipt of money for the sale of drugs because he had already been convicted of the sale of drugs and there was no evidence that he used the money to further illegal operations. 39 F.3d at 484-86. According to the Fourth Circuit, the money laundering statute should not be interpreted to criminalize the very same conduct already criminalized by the drug laws. *Id.* at 485-86.

We are not bound by *Heaps*. In this circuit we have held that the cashing of checks fraudulently obtained was sufficient evidence of an intent to promote the underlying fraudulent scheme. *United States v. Reed*, 167 F.3d 984, 992 (6th Cir. 1999) (citing *United States v. Haun*, 90 F.3d 1096, 1100 (6th Cir. 1996)). As we observed in *Reed*, there are two lines of cases regarding the evidence necessary to show intent to launder money, and this circuit has followed the line of cases holding that even where the underlying crime

has been completed, "transferring or cashing a check promotes the prior unlawful activity and satisfies the requirement of the statute." 167 F.3d at 992 (citing *Haun*, 90 F.3d at 1100; *United States v. Cavalier*, 17 F.3d 90, 93 (5th Cir. 1994); *United States v. Paramo*, 998 F.2d 1212, 1217-18 (3d Cir. 1993)). *See also United States v. Valuck*, 286 F.3d 221, 226 (5th Cir. 2002) (reaffirming the holding in *Cavalier* that "the cashing of an illegally obtained check can promote the completion of an underlying unlawful act"). The Federal Express packages at issue in the money laundering counts contained checks fraudulently obtained by IDM. A rational trier of fact could reasonably conclude that the transfer of the checks from Barbados to New York and the negotiation of those checks promoted the underlying mail fraud scheme, and that by facilitating the negotiation of the checks Bohn specifically intended to promote the mail fraud scheme.

Finally, Bohn contends that his money laundering convictions are subject to dismissal because there was no evidence that he intended to aid IDM in concealing the source of the funds. The money laundering counts charge Bohn with violating two subsections of the money laundering statute, 18 U.S.C. § 1956(a)(2)(A) and § 1956(a)(2)(B)(i). Subsection (a)(2)(A) requires proof of intent to promote the carrying on of unlawful activity, while subsection (a)(2)(B)(i) requires proof of knowledge that the transportation was designed to conceal the proceeds of the unlawful activity. Although the government indicted on both subsections, it was only required to prove one or the other. *See United States v. Hixon*, 987 F.2d 1261, 1265 (6th Cir. 1993) (holding that when an indictment charges several acts

conjunctively under a statute which subjects several alternative acts to the same punishment, the government need only prove violation of one of the alleged acts to prove violation of the statute); *United States v. Westine,* No. 92-3664, 1994 WL 88831, at *2 (6th Cir. Mar. 17, 1994) (holding that promotion and concealment "are alternative bases for a money laundering conviction; proof of intent to accomplish either will suffice."); *United States v. Jackson,* 935 F.2d 832, 842 (7th Cir. 1991) (holding that where an indictment charges violations of both § 1956(a)(1)(A)(i) and § 1956(a)(1)(B)(i), the statute only requires proof on one or the other). Because Bohn was indicted on both the promotion and the concealment bases of money laundering, his assertion that there were no proofs on concealment, even if accurate, would not entitle him to dismissal of the money laundering charges because there was clearly sufficient evidence of promotion.

We are satisfied that the evidence was sufficient to support Bohn's convictions on all charges.

V.

Bohn's final argument on appeal is that the criminal forfeiture should be vacated because the evidence was not sufficient to show a nexus between the specified property and any criminal activity.

On March 6, 2007, the district court entered a preliminary order of forfeiture ordering the forfeiture of $22,409,494.48 to be satisfied from any interest Bohn has in property identified in the forfeiture order. Paragraph 1(c) of the order identifies certain bank

accounts as directly forfeitable property, and paragraph 2 identifies certain bank accounts as substitute assets. As evidenced in a stipulation between the government and Bohn, the amount of the forfeiture constitutes the amount in wire transfers that were made from EUB's IDM account at Marine Midland Bank to accounts in the name of IDM at four other banks.

Bohn does not contest the amount of the forfeiture. Instead, he contests the property identified to be forfeited. Bohn contends that the order of forfeiture is improper because there was no showing that the property identified in paragraphs 1(c) and 2 is his, or that there is a nexus between that property and racketeering or money laundering.

We review the district court's interpretation of the federal forfeiture laws *de novo,* the district court's findings of fact under a clearly erroneous standard, and the question of whether those facts are sufficient to constitute a proper criminal forfeiture *de novo. United States v. O'Dell,* 247 F.3d 655, 679 (6th Cir. 2001). "Forfeiture is an element of the sentence imposed *following* conviction." *Libretti v. United States,* 516 U.S. 29, 38-39 (1995). Accordingly, the government's burden of proof in a criminal forfeiture proceeding is proof by a preponderance of the evidence. *United States v. Hasson,* 333 F.3d 1264, 1277-78 (11th Cir. 2003); *United States v. Bellomo,* 176 F.3d 580, 595 (2d Cir. 1999).

The procedure for criminal forfeitures is governed by Rule 32.2 of the Federal Rules of Criminal Procedure. Rule 32.2 requires the court to first

determine "what property is subject to forfeiture under the applicable statute" and then to determine "whether the government has established the requisite **nexus** between the property and the offense." Fed.R.Crim.P. 32.2(b)(1) (emphasis added).

The two statutes governing forfeiture in this case are the RICO statute, 18 U.S.C. § 1963, and the criminal forfeiture statute, 18 U.S.C. § 982. The RICO statute provides that a person who is convicted of a RICO violation "shall forfeit" the following:

> (1) any interest the person has acquired or maintained in violation of section 1962;
> (2) any--
> (A) interest in;
> (B) security of;
> (C) claim against; or
> (D) property or contractual right of any kind affording a source of influence over;
> any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and
> (3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

18 U.S.C. § 1963(a). The RICO forfeiture provisions are broadly construed to effectuate their punitive rather than remedial purpose. *United States v. Corrado*, 227 F.3d 543, 552 (6th Cir. 2000) (citing *Russello v. United States*, 464 U.S. 16, 26-27 (1983);

United States v. DeFries, 129 F.3d 1293, 1315 (D.C. Cir. 1997)); *see also United States v. Voigt,* 89 F.3d 1050, 1083-84 (3d Cir. 1996) (noting that § 1963(a)'s coverage is "extremely broad and sweeping"). Nevertheless, under the RICO statute the court is mandated to assess forfeiture against a defendant only when "the facts support a finding of a sufficient **nexus** between the property to be forfeited and the RICO violation." *Corrado,* 227 F.3d at 552 (emphasis added).

The criminal forfeiture statute which governs forfeiture after a conviction for money laundering in violation of 18 U.S.C. § 1956 provides that the court "shall order" the defendant to forfeit "any property, real or personal, **involved in** such offense, or any property **traceable** to such property." 18 U.S.C. § 982(a)(1) (emphasis added).

Although the preliminary order of forfeiture recites that the property identified in the order constitutes property that is forfeitable under either § 1962 or § 1956, Bohn contends that the government did not produce any evidence to establish the requisite nexus between the property and the offense.

In response, the government does not identify any evidence of a nexus between the property and Bohn's criminal activity. Instead, the government contends that because the entities named in the preliminary order of forfeiture (e.g., EUB, Atlas Corp., and PITCO) were all used to further IDM's criminal enterprise, under the broad language of the RICO statute, Bohn's interest in each of those entities' assets is subject to forfeiture.

The government's response is wholly inadequate to support the forfeiture of specific property. The record does not include any evidence that any money of IDM, any money from an IDM customer, or any funds traceable to IDM has ever been deposited in any of the accounts. The record does not include any evidence that any of the accounts are in Bohn's name, that any of the accounts belong to Bohn, that any of Bohn's money has ever been deposited in the accounts, or that Bohn has ever had a beneficial interest in the funds in the accounts. The record does not include any evidence as to when the accounts were opened, who owns the accounts, or the source of the funds in the accounts. Whether any of the property listed in the preliminary order of forfeiture has any nexus to the RICO violation, or was involved in or traceable to the money laundering offense, is a matter of pure speculation.

There is not sufficient evidence in the record to show by a preponderance of the evidence that any of the property listed in the preliminary order of forfeiture is subject to forfeiture. Accordingly, the preliminary order of forfeiture will be reversed and the issue of forfeiture will be remanded to the district court for further proceedings.

VI.

For the reasons stated, we affirm Bohn's conviction, but reverse and remand the order of preliminary forfeiture for further proceedings.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

Case No. 02-20165-D/P

[Filed August 16, 2005]

UNITED STATES OF AMERICA, Plaintiff,	)
v.	)
ALVIN IRWIN MOSS, et al., Defendants.	)

ORDER DENYING DEFENDANT BOHN'S RENEWED MOTION FOR SPEEDY TRIAL (dkt. #381) AND MOTION TO DISMISS (dkt. #539)

Before the Court is the renewed Motion for Speedy Trial (dkt. #381), filed September 3, 2004, and Motion to Dismiss[1] (dkt. #539), filed June 17, 2005, of

[1] Defendant Bohn joined the motion to dismiss (dkt. #539) to the extent that he seeks dismissal for violation of his Sixth Amendment right to a speedy trial. All other movants have subsequently pled guilty, rendering these issues moot as to them.

Defendant Robert Murray Bohn ("Bohn" or "Defendant"). For the following reasons, the Court **DENIES** both motions.

I. Factual & Procedural History

The chronology must be given in detail because of the nature of the issue before the Court. The indictment against the Defendant was returned by the federal grand jury on May 8, 2002, charging Bohn[2] and others with racketeering, mail fraud, smuggling, and money laundering in furtherance of an allegedly illegal lottery gaming business. Bohn was arraigned on January 9, 2003.

In 1996, the FBI executed a search warrant on the Barbados facilities of IDM Direct Marketing Corporation ("IDM") and seized electronic information from twenty desktop computers and seven mainframe servers. *See* Depo. of Detective Lee Stewart, p. 237 at lines 16, 19-23. Bohn was an officer of Pacific International Trust Company Limited; Vanuatu Maritime Services, Ltd.; European Bank, Ltd.; and Atlas Corporation, Ltd.. Bohn allegedly established checking accounts on behalf of IDM that were used in the collection and ultimate distribution of proceeds from the sales and promotion of lottery tickets to citizens of the United States. *See* Complaint, p. 18 at line 13.

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[2] Bohn was charged in the following counts of the indictment: 1, 2, 4-8, 55-88.

Upon the request of Special Agent Pamela Jane Vanderburg ("Vanderburg"), the Computer Analysis Response Team ("CART") of the FBI made arrangements in August 1998 to set up a hard drive of the electronic data seized from IDM for Vanderburg's review or for "whomever she designated to review that information." *See* Depo. of Lee Stewart, p. 253 at lines 1-5. This took CART approximately a week to create. *Id.* at p. 254 at lines 1-7. Some of the data acquired from IDM was found to be partially corrupted, making review of this material difficult. *Id.* at p. 258 at lines 11-18, 22-25. The IDM data copy created by CART, however, had an operating system with intermediate platform that facilitated review and query search in substantial part. *Id.* at p. 253 at lines 20-21, 23-24; p. 260 at lines 22-25; p. 261 at 1-5.

Upon the government's motion, the Court initially ordered the indictment in this case sealed. The indictment was unsealed on December 4, 2002. From December of 2002 until April 15, 2005, the record reflects that twenty specific requests for discovery from the government had been made, including copies of all electronic material seized or obtained by the government from facilities in Barbados and elsewhere. *See* Docket No. 425 at Exhibits A & B; Docket No. 486 at Exhibit A. The government contends that it received its first written discovery request from certain Defendants on February 3, 2003 for the production of all discovery materials, including but not limited to electronic materials seized in Barbados, Australia, and the United States. The government states that counsel for Bohn did not specifically request electronic discovery material nor has any defense counsel complied with the government's requests for discovery

documents. In March 2003, Defendants were given access to 167 banker boxes of material that were in the government's possession from seizures in this case.

On April 22, 2003, the Court entered an Order dismissing the indictment as facially defective as to all Defendants. Subsequently, the Court ruled that all discovery in this case would cease, pending the Sixth Circuit's decision on the government's appeal. On July 6, 2004, the Sixth Circuit reversed the dismissal and reinstated the indictment. On July 29, 2004, at a status conference, the Court orally instructed the parties to resume discovery, and requested that the process be conducted in a manner that facilitated the most expeditious use of resources to prepare for trial.

On August 18, 2004, Bohn moved to modify the conditions of his release, and alternatively moved for severance and a speedy trial. On November 5, 2004, certain Defendants filed a motion to compel discovery ("November 5, 2004 Motion") and on November 8, 2004, the Court entered an Order of Reference directing U.S. Magistrate Judge Pham to make a determination on that motion. On November 18, 2004, at the direction of the magistrate judge, the government filed a response, with a supplement filed December 17, 2004, setting forth an objection to the scope of certain Defendants' discovery requests.

On April 15, 2005, pending the magistrate judge's ruling, a status conference was conducted before the Court on certain Defendants' requested production of electronic materials. On April 29, 2005, the Court entered an Order, *nunc pro tunc* to April 15, 2005, ordering the government to produce all requested

discovery on or before thirty days from April 15, 2005.[3] Specifically, a May 16, 2005 production deadline was imposed on the government. The magistrate judge amended his May 5, 2005 Order to conform with the Court's discovery deadline. Bohn contends that, to date, the government has failed to comply with the Court's discovery order. Bohn is currently under house arrest and the trial is set for hearing in September of 2005.

II. Analysis

Bohn asserts that the indictment should be dismissed, with prejudice, because the government's discovery delays have amounted to a violation of Defendant's Sixth Amendment right to a speedy trial. Bohn contends that material requested by certain Defendants more than two and a half years ago has been in the government's possession in retrievable form and that production delays have been either negligent or willful.

The government contends that the two-and-a-half-year delay asserted by the Defendant does not take into consideration numerous issues that were pending before this Court and the Court of Appeals. It asserts that such delays should not be attributed to the government. Specifically, the government argues that it should not be penalized for the following: (1) the fourteen month period during the appeal to the Sixth

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[3] The government was given ten days from April 29, 2005 to show cause as to why it could not produce all items requested by the Defendants in the time called for in the Court's Order.

Circuit of the Court's April 22, 2003 dismissal of the indictment and (2) the six months when the Magistrate Judge considered the government's objection to the scope of Defendant's November 5, 2004 Motion.

The right to a speedy trial is "fundamental" and is imposed by the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment. *See Smith v. Hooey*, 393 US. 374 (1969). The balancing of four factors have been identified as necessary to a court's analysis in speedy trial cases. These factors are (1) length of delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4)prejudice to the defendant, *Barker v. Wingo*, 407 U.S. 514, 530 (1972). When a Sixth Amendment right to a speedy trial has been violated, the only appropriate remedy is dismissal of the indictment. *Strunk v. United States*, 412 U.S. 434, 439-40 (1973); *see also Doggett v. U.S.*, 505 U.S. 647 (1992) (delay of eight and one half years between defendant's indictment and arrest violated his Sixth Amendment right to speedy trial and warranted dismissal).

The first of these factors is a double inquiry because simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from a "presumptively prejudicial" delay. *Id.* at 652 (citing *Barker*, 407 U.S. at 530-31). Depending on the nature of the charges, courts have generally found post-accusation delay "presumptively prejudicial" as it approaches one year. *Id.* (the term "presumptive prejudice" in this threshold context does not "necessarily indicate a statistical probability of

prejudice," but simply triggers a delay unreasonable enough to trigger the *Barker* inquiry). If this showing is met, the court must then consider, as one factor among several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim. *See Barker*, 407 U.S. at 533-34. This latter inquiry is significant to the speedy trial analysis because "the presumption that the pretrial delay has prejudiced the accused increases over time." *See Doggett*, 505 U.S. at 652. The speedy trial interest must, however, be balanced with the necessity for preserving society's interest in the administration of criminal justice. *See United States v. Morrison*, 449 U.S. 361, 364 (1981).

The question before the Court is whether Bohn's speedy trial claim meets the *Barker* test for dismissal. First, in considering whether presumptive prejudice exists, the Court notes that the Defendant correctly asserts that a two-a-half-year delay has occurred. The government, however, asserts that delays that were the result of judicial administration before the Court and Court of Appeals should not be factored in this analysis.

The Court finds that the fourteen months in which this matter awaited determination of the government's appeal and the six-month period whereby a motion to compel discovery was before the Magistrate Judge should not be attributed to government delay. In *United States v. Howard*, 218 F.3d 556 (6th Cir. 2000), the Sixth Circuit stated that in calculating the length of delay for purposes of determining whether a defendant's Sixth Amendment right to speedy trial has been violated, only those periods of delay attributable

to government or court are relevant to the claim. *Howard*, 218 F.3d at 561. In accordance with the *Howard* court's analysis, judicial pre-trial delays, albeit not attributed to the government, are factored into the speedy trial analysis, though they are given less weight than if the delays were attributable to the government. Even without considering the 20 months attributed to judicial pre-trial considerations, the remaining fourteen months would still, standing alone, presumptively trigger the initial *Barker* inquiry.

As the initial showing of prejudice has presumptively been met, the Court must inquire into the extent to which the delay stretched beyond the bare minimum needed to trigger judicial examination. In *Barker*, the Supreme Court held that where four years of the period from arrest to trial was attributed to the prosecution's failure or inability to try a co-indictee, and where the defendant was not seriously prejudiced by the more than five-year delay, the Sixth Amendment right to a speedy trial was not violated. In the case at bar, discovery delays have certainly stretched the time for which a jury trial would have occurred in this matter. Despite the discovery delays, much of which the Court attributes to the questionable tactics of Vanderburg, the Court finds that the one year presumption under the *Barker* analysis does not weigh overwhelmingly in Bohn's favor when factoring in the judicial administrative delays and the extent that the delay stretched beyond the bare minimum to trigger judicial inquiry. Additionally, as many of the Defendants in this matter have pled guilty, the Court anticipates that Bohn's trial will proceed as scheduled in September 2005.

Defendant has satisfied the third factor by asserting his right to speedy trial in August of 2004. As to the fourth factor, whether Bohn has been prejudiced by the delay, the Court finds that he has certainly been prejudiced by the delay and the conditions of confinement. The Court finds, however, that the prejudice is not so extreme as to amount to a denial of due process warranting dismissal of the indictment.

III. Conclusion

For the reasons stated above, the Court **DENIES** Defendant's motion to dismiss for Sixth Amendment speedy trial violations.

IT IS SO ORDERED this 16 day of August, 2005.

/s/
BERNICE BOUIE DONALD
UNITED STATE DISTRICT COURT

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Case No. 07-5307

[Issued August 4, 2008]

UNITED STATES OF AMERICA, Plaintiff - Appellee	)
v.	)
ROBERT MURRAY BOHN, Defendant - Appellant	)

BEFORE: SUHRHEINRICH and ROGERS, Circuit Judges; BELL, Chief District Judge.*

ORDER

Upon consideration of the petition for rehearing filed by the appellee United States of America,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

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* The Honorable Robert Holmes Bell, Chief United States District Judge for the Western District of Michigan, sitting by designation.

ENTERED BY ORDER OF THE COURT
Leonard Green, Clerk

/s/_____

Issued: August 04, 2008

APPENDIX D

UNITED STATES CONSTITUTION AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

18 U.S.C. § 3292

Suspension of limitations to permit United States to obtain foreign evidence

(a)(1) Upon application of the United States, filed before return of an indictment, indicating that evidence of an offense is in a foreign country, the district court before which a grand jury is impaneled to investigate the offense shall suspend the running of the statute of limitations for the offense if the court finds by a preponderance of the evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

(2) The court shall rule upon such application not later than thirty days after the filing of the application.

(b) Except as provided in subsection (c) of this section, a period of suspension under this section shall begin on the date on which the official request is made and end on the date on which the foreign court or authority takes final action on the request.

(c) The total of all periods of suspension under this section with respect to an offense--

(1) shall not exceed three years; and

(2) shall not extend a period within which a criminal case must be initiated for more than six months if all foreign authorities take final action before such period would expire without regard to this section.

(d) As used in this section, the term "official request" means a letter rogatory, a request under a treaty or convention, or any other request for evidence made by a court of the United States or an authority of the United States having criminal law enforcement responsibility, to a court or other authority of a foreign country.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF TENNESSEE
WESTERN DIVISION

NO. 02-20165

[Filed October 11, 2006]

UNITED STATES OF AMERICA, Plaintiff,	)
VS .	)
ROBERT BOHN, Defendant.	)

NONJURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE
BERNICE B. DONALD, JUDGE

THURSDAY AFTERNOON

SEPTEMBER 22, 2005

LYNN DUDLEY
OFFICIAL REPORTER
950 FEDERAL BUILDING
MEMPHIS, TENNESSEE 38103

* * *

[p.1113] litigating search and seizure issue made by Al Moss and the companies down there asking for a return of the documents.

In fact, Your Honor knows that from the plea agreement with Al Moss which is part of his plea agreement was to release those documents and drop that proceeding down there so the documents could go forward, so that's not -- what amazes me is that I don't hear any -- any response from Mr. Newsom about why the court wasn't told that the treaty hadn't been ratified. Why the court wasn't told that the Barbados authorities had said you can't do this. To me, the evidence of the absence of that argument is compelling.

THE COURT: Thank you.

Before the court is the defendant's motion to dismiss the indictment based on the government's failure to meet the requirements of 18 U.S.C. Section 3292.

That statute has already been referenced by both parties in the argument. And the statute 3292(a)(1) provides, suspension of limitations to permit United States to obtain foreign evidence.

At (a)(1) it provides: Upon [p.1114] application of the United States filed before return of an indictment indicating that evidence of an offense is in a foreign country, the district court, before which a grand jury is impaneled to investigate the offense, shall suspend the running of the statute of limitations for the offense if

the court finds by a preponderance of the evidence that an official request has been made for such evidence, and that it reasonably appears or reasonably appears at the time that the request was made that such evidence is or was in a foreign country. The court shall rule upon the application -- I won't go into that.

But at Section (d) it provides that the term official request means a letter rogatory, a request under a treaty or convention, or any other request for evidence made by a court of the United States or an authority of the United States having criminal law enforcement responsibility to a court or other authority of a foreign country.

The defense alleges that there are four prongs, the four bases where the government's action come up short.

First the defendant argues that under 3292 the statute of limitations can only be [p.1115] suspended if the government first made an official request for evidence in a foreign country.

And the defendant argues that courts have unanimously held that this only refers to a government request to obtain evidence located in a foreign country with emphasize on the word obtain.

The government's official request asks the Barbadian authorities to seize IDM's and Al Moss' documents and files, but did not request that the evidence be produced to the United States.

The government responds that one cannot look at one word in the request but must look at the request in its totality and read it as an integrated document rather than focusing on a particular word, specifically the word obtain.

The -- or produce, pardon me, produce.

The defense has submitted MLAT's that the government sent to various other countries which are different in substance and content than the one submitted to Barbados.

The defense has also pointed out and submit from the Trainor case, which the Eleventh Circuit held was insufficient and inadequate to meet the requirements of Section 3229.

[p.1116] I looked at the statute, and I read the government's request. It did provide that the Barbadian government be requested to seize the documents, and I don't have the request in front of me right now, but I did look at it and go over it in detail.

And what I -- what I found in the document in reading that that the government's intent in the document was clearly evinced that the evidence seized would be turned over to the United States for its use as part of its investigation.

The defendant argues that the reason that the government didn't use the word produce or obtain in there request is because the treaty was not valid and that would have not been appropriate under Barbadian law. And that may be one of the reasons.

But it appears to me that more plausible, I guess, interpretation is because this was going to be a joint activity between the U. S. and Barbadian law and the FBI were going to be right there working with the -- with the Barbadian authorities. So when the -- it was actually the FBI along with the Barbadian authorities that were [p. 1117] going in and actually take custody and control of the documents.

So when I read the request, I don't find that the request is fatal because it doesn't say produce to the United States, because that's clearly in the integrated document. The request -- so the MLAT, even though it differed from the others, I don't find that it is fatal because of that.

With respect to comparing this document against the document in Trainor, the Trainor case was out of the Eleventh Circuit, it is not binding precedence for this court, and the Sixth Circuit has not spoken to this issue and may have the opportunity to speak directly to this issue.

But I don't -- I do find that the government made an official request. Obviously the Department of Justice as a law enforcement entity, they made that written request, it seems to comply with what the law required at that juncture. And so on that first prong I find that the defendant's argument fails.

On the second prong, the defense provides that a 3292 provides that the statute of [p.1118] limitations can only be suspended when the request has not been completed. The defense contends that Barbados

seizures of the records fulfill the government's request, thereby constituting final action.

While there is ample evidence in this record that the government brought back a substantial body of evidence and computer hard drives which were copied, there's been nothing in the record to refute the testimony of Agent Vanderburg that there were some 140 boxes of documents still under arrest down in Barbados and the government does not have access, has not obtained.

The government has asserted from the beginning that these documents were critical to their investigation and their prosecution of this case or they would have been helpful, pardon me.

Because those documents have not yet been produced and because the order that was put in place basically staying the documents has not been finally adjudicated, the court finds that final action has not been completed and thus the request to this court for tolling was proper.

Third, the defendant contends that the [p.1119] government's motion to toll the statute of limitations claimed that the official request for assistance was based on a treaty between the United States and Barbados. However, at the time that their request was made and at the time the tolling motion was filed, the treaty had not been -- had been proposed, rather, but not been ratified.

And I agree with Mr. Reid that this is a very troubling component of this motion. Mr. Newsom has

not spoken much about this today and didn't write much about that in the response to the motion, because it is a, I submit, a fairly problematic matter.

But having said that, the United States requested the cooperation of the Barbadian authority in a particular manner. Notwithstanding the Shepard affidavit, not notwithstanding the Leecock letter, the Barbadian authorities cooperated with the United States and made that information available until that order came down staying the proceedings.

I read last night the affidavits of a couple of the police officers who were involved in the -- in executing the search warrant. And it is [p.1120] clear that there was, seemed to me unrestricted cooperation between the Barbadian law enforcement officials and the FBI. So certainly there was that cooperation.

I'm not sure what the appropriate course of action is when a country cooperates fully if they don't have the legal authority to do so, but that's something I think for a different court to consider.

I don't want to suggest that the court would not have wanted to know about these questions raised regarding Mr. Leecock notice or the fact that the treaty had not been ratified at the time that the court looked at the application, but that did not occur. I don't find that this is fatal since the Barbadian authorities did, in fact, cooperate.

Mr. Shepard's affidavit says that no request like that would have been appropriate or would have been honored until there had been ratification and a

comparable law, I believe, passed in the Barbadian -- in Barbados. Not withstanding that statement in the affidavit, there was cooperation by Barbados and the evidence was obtained and handed over.

[p.1121] So that's -- this court will not go back and say because Barbados', I guess, generosity exceeded their legal obligation, that we should exclude it or find that the government can't proceed in this -- this matter, that's not my finding.

The fourth prong of the defense motion is that the government's motion to suspend the statute of limitations contain numerous errors and -- numerous omissions and material misrepresentations.

One of those being the language of the request, but the more significant one being the ratification of the treaty.

As I said before, I, as a court, I think all courts want to have as much information as they can. Mr. Newsom, as an officer of the court, has assured the court for the record that there was no intent on his part to mislead either by omission or commission, and I will accept that.

As I said before, the Barbadian authorities cooperated fully. And I find that the motion to dismiss for failure to meet the requirements of 3292 is not well-founded. And I will deny that motion for the reasons that I have [p.1122] stated on the record.

And I will now hear Mr. Reid's motion -- let me look at these notes -- I will now hear Mr. Reid's motion, Rule 29 motion.

RULE 29 MOTION

MR. REID: Thank you.

I always say thank you, Your Honor, when I stand up but I don't mean to be thanking you for that ruling, I'm mean to be thanking you for the opportunity to speak on the next motion.

THE COURT: Certainly.

MR. REID: Just purely for the record I think I need to renew the old motion that's actually gone to the Court of Appeals that the indictment did not properly plead tolling, I don't care to say anything about that, I don't expect a further ruling, I'm preserving the record.

THE COURT: Thank you.

MR. REID: For the record I'm making a general motion that the -- all counts in the indictment against Robert Bohn be dismissed on the grounds that the government has failed to prove each and every element of the crime with sufficient evidence in which he could be found guilty beyond a reasonable doubt including but not

* * * *

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF TENNESSEE
WESTERN DIVISION

MISC. NO. 98-EP-018-D

[Filed December 14, 1998]

FILED UNDER SEAL OF COURT

IN RE: GRAND JURY MATTER)
98-2 GRAND JURY)
)

ORDER ON MOTION OF THE UNITED STATES FOR SUSPENSION OF LIMITATIONS TO OBTAIN FOREIGN EVIDENCE PURSUANT TO TITLE 18, UNITED STATES CODE, SECTION 3292

This cause came on to be heard this date upon written, ex parte motion of the United States to suspend the running of the statutes of limitation, concerning an on-going FBI criminal investigation, pursuant to Title 18, United States Code, Section 3292; and

IT SATISFACTORILY APPEARING TO THE COURT:

1) That this application of the United States is being made prior to the return of any indictment regarding those matters under investigation before the grand jury;

2) That the United States has met its burden of satisfying the Court, by a perponderance of the evidence, the following:

A) That presently, there is evidence of an offense which is located in a foreign country, namely, Barbados, West Indies;

B) That an official request has been made for such evidence, specifically, on or about June 27, 1996;

C) That it reasonably appears, and reasonably appeared at the time the request was made, that such evidence is now, and was, in a foreign country, namely, Barbados, West Indies.

IT IS THEREFORE ORDERED:

1) That the Statutes of Limitation, regarding those offenses which are the subject of the FBI on-going grand jury investigation, are suspended as specifically provided for under Title 18, United States Code, Section 3292;

2) The the above-referenced Ex Parte Motion of the United States and this Order shall be filed under seal pending further order of the Court.

ENTER THIS 11th DAY OF DECEMBER, 1998.

/s/
UNITED STATES DISTRICT JUDGE

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF TENNESSEE
WESTERN DIVISION

MISC. NO. 98-EP-018-D

[Filed December 9, 1998]

FILED UNDER SEAL OF COURT

IN RE: GRAND JURY MATTER)
98-2 GRAND JURY)
)

EX PARTE MOTION OF THE UNITED STATES FOR SUSPENSION OF LIMITATIONS TO OBTAIN FOREIGN EVIDENCE PURSUANT TO TITLE 18, UNITED STATES CODE, SECTION 3292

Comes now the United States of America, by and through the United States Attorney for the Western District of Tennessee and her duly authorized Assistant, Dan L. Newsom, and would move this Honorable Court as follows:

1. The Federal Bureau of Investigation (FBI), Memphis Division, has been conducting an on-going grand jury investigation concerning an entity

known as IDM, Alvin Moss (a Canadian citizen), and other associated entities and individuals. The potential federal criminal statutes which may have been, and are possibly being violated, include Title 18, United States Code, Section 1301 (Importation and Interstate Distribution of Lottery Materials); Section 1302 (Mailing Lottery Materials); Section 1953 (Interstate Transportation of Wagering Paraphernalia); Section 1955 Section (Illegal Gambling Businesses); 1341 (Mail Fraud); Section 1343 (Wire Fraud); Section 545 (Smuggling); Section 1956 (Money Laundering); Section 1962 (RICCO) and Section 371 (Conspiracy). Active investigation regarding these entities and individuals commenced in or about January, 1996.

2. As part of the above-referenced investigation, it was determined that IDM and its associated entities were located in other countries, including Canada and Barbados. In 1996, it was further determined that IDM had its headquarters in Bridgetown, Barbados, West Indies. IDM was soliciting U.S. citizens to participate in domestic and foreign lotteries. The U.S. Mail and Fed Ex Corporation were both utilized by IDM for distribution of its solicitations to U.S. citizens, and to further its overall scheme. Accounts pertaining to all customers were believed to be maintained at IDM headquarters in Barbados.

3. On or about June 27, 1996, as part of the investigation, a Letter of Request was signed and forwarded, by and from the Office of International Affairs (Department of Justice) (Central Authority for the United States) to the Attorney General of

Barbados (Central Authority for Barbados). The said Request was for the issuance and execution of search warrants on IDM offices, storage facilities, the private residence of Al Moss, and for bank records related to IDM.[1]

4. On or about July 12, 1996, pursuant to the said request, Barbados law enforcement officers, assisted by FBI agents, executed search warrants at IDM headquarters and other storage facilities in Barbados. As a result of these searches, computer records and physical documents, totaling approximately one hundred forty (140) banker-sized boxes, were seized by the law enforcement officers. Initial review of the seized documents revealed that they were of significant evidentiary value to the on-going FBI investigation.

5. Following the abovesaid searches, representatives of IDM filed court pleadings, in Barbados, requesting that all seized documents be sealed and not removed from Barbados prior to a judicial determination of the legality of the searches. The Barbados court thereafter entered an order granting IDM's motion, pending a judicial hearing on the matter. On March 18, 1998, after numerous continuances and a judicial hearing on the case, the Barbados court entered an Order ruling (1) that IDM's motion was not properly before the court; and (2) that the interim Order (sealing the records

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[1] A copy of the Letter of Request and accompanying "MLAT" is attached hereto as **Exhibit A.**

and prohibiting their removal from Barbados) be dismissed.[2]

6. Representatives of IDM immediately gave notice of appeal and moved to enjoin the law enforcement authorities from unsealing the seized documents or removing them from Barbados, pending the outcome of their appeal. The United States has been informed that Court granted IDM's said motion.

7. As a result of the above proceedings, the boxes of seized potential evidence currently remain in Barbados and have not been provided to U.S. law enforcement authorities pursuant to the June 27, 1996 official Letter of Request.

8. This Application is being made prior to the return of any indictment regarding those matters under investigation before the grand jury.

WHEREFORE, PREMISES CONSIDERED, the United States moves the Court to enter an order, pursuant to Title 18, United States Code, Section 3292, suspending the running of the statutes of limitation, pertaining to those offenses which are the subject of this investigation, as provided in said Section.

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[2]A copy of the Barbados court order is attached hereto as **Exhibit B.**

Respectfully submitted,

VERONICA F. COLEMAN
United States Attorney

/s/
DAN L. NEWSOM
Senior Litigation Counsel

EXHIBIT A

U. S. Department of Justice
Office of International Affairs
Criminal Division
Bond Building, Room 5100
1400 New York Avenue, N.W.
Washington, D.C. 20005
(202/514-0000) - (202/514-0080 Fax)

Washington, D.C. 20530

June 27, 1996

The Honorable David Simmons
Attorney General of Barbados
Ministry of Justice
Sir Frank Walcott Building
Culloden Road
St. Michael, Barbados

Dear Attorney General Simmons:

Re: "MLAT" Requests for Assistance in Blair DOWN and Alvin MOSS

Enclosed please find a requests for assistance submitted pursuant to the Mutual Assistance Legislation of Barbados. We are grateful for your assistance in these matters.

Sincerely,

Frances Fragos Townsend
Director

Office of International Affairs
Criminal Division

By: Beverly A. Hadley
Beverly A. Hadley
Senior Trial Attorney

cc: AUSA Peter Mueller
WDWA

AUSA Daniel Newsom
WDTN

U. S. Department of Justice
Washington, D.C. 20530

To: The Central Authority of Barbados

Subject: Request For Assistance in the Investigation of Alvin Moss and Others

The Central Authority of the United States requests the assistance of the appropriate authorities in Barbados pursuant to the Treaty Between the United States of America and Barbados on Mutual Assistance in Criminal Matters, signed at Bridgetown on February 28, 1996. The assistance is sought in connection with a criminal grand jury investigation being conducted by the United States Department of Justice ("DOJ").

As described in greater detail below, DOJ is investigating an alleged scheme by Alvin Moss, Dick Titterington, Geof Feldman, Avy Zohar, Winston Best, Sherrie Cave, Fred Collier, Robert Tucker, Marica Nurse (Subjects) and others to violate United States criminal laws prohibiting mail fraud, wire fraud, importing, transporting or mailing lottery chances, operating an illegal gambling business, transporting wagering paraphernalia, smuggling, and money laundering. The investigation is being conducted by the United States Attorney's Office for the Western District of Tennessee, located in Memphis, Tennessee, United States. The scheme was carried out against U.S. citizens across the country and has been facilitated through the use of Federal Express, headquartered in Memphis, Tennessee. The assistance of the authorities in Barbados is sought in order to

obtain evidence of the alleged scheme, as described below.

SUBJECT AND NATURE OF THE PROCEEDINGS

A. OVERVIEW

Alvin Moss, Dick Titterington, Geof Feldman, Avy Zohar, Winston Best, Sherrie Cave, Fred Collier, Robert Tucker, Marica Nurse (collectively, the "Subjects"), and a number of other people, are believed to have executed, and are continuing to execute, a wide-ranging scheme to sell lottery chances in the United States, to defraud victims throughout the United States, and to launder money. Through these means, the Subjects solicit thousands of United States residents to purchase purported chances in various foreign and domestic government-authorized lotteries. This conduct on its face is violative of a variety of U.S. criminal laws.

In addition, in order to induce victims to purchase the purported lottery tickets, the Subjects have caused a variety of misleading, deceptive and false representations to be made to the victims, all in violation of United States criminal laws against mail fraud and wire fraud. In furtherance of the scheme, the Subjects transferred, and caused the transfer, of money between and among the United States, Canada, Australia and Barbados, all in violation of United States laws against money laundering.

B. THE ILLEGAL SCHEME

The following information has been obtained from a variety of sources during almost two years of criminal investigation, including former employees of the Subjects, victims of the alleged crimes, foreign and domestic law enforcement officers, seizures and searches of contraband, and bank and lottery records.

1. The Subjects and the Business

Alvin Moss formerly resided at 603-1075 Barclay Street, Vancouver, B.C., Canada. However, Alvin Moss has relocated to #3 Morgans Cove, Saint Michael, Barbados, West Indies. Additional information about the Subjects and other persons and entities involved in the criminal scheme is set forth below.

Alvin Moss has been documented as being involved in the distribution of lottery tickets and/or material into the United States since at least 1980. Moss has operated at various addresses, using numerous company names.

Between 1992 and the present, Alvin Moss and the Subjects have operated a number of related businesses in Canada and Barbados. Those businesses (collectively referred to as "International Direct Marketing" or "IDM") include: (1) World-Wide Enterprises, Ltd; (2) Assertive Marketing Services; (3) International Lottery Payout Services; (4) Canusa, Ltd; (5) Winning Advantage International; (6) Boss Communications, (7) WCLA Enterprises, Ltd; and several other entities.

Alvin Moss is the primary owner and true party in interest of IDM and directs the operations of IDM. Fred Collier serves as Operations Manager/Director of Marketing for IDM in Barbados. Winston Best has served as financial comptroller for IDM in Barbados. Sherrie Cave is Director of List/Analysis, which includes "seeding" lists sold by IDM, coordinating the lead brokerage operation and sales analysis in Barbados. Marcia Nurse worked as Operations Manager for IDM in Barbados. Avy Zohar is Operations Manager for IDM's subsidiary in Canada, Assertive Marketing Services, and she supervises the contract IDM has with Vancouver Mail Service, which is believed to mail out IDM's promotions and confirmation notices to customers. Dick Tillerington is the Telemarketing Consultant and Geof Feldman is the Creative Consultant in New York.

At all times between 1992 and the present, IDM's primary business has been the sale of purported lottery tickets, as well as other lottery related goods and services, to victims in the United States, who make up most of the victims in the overall scheme. To conduct this business, and to market these purported goods and services, IDM- -under the direction of Alvin Moss, Fred Collier, Avy Zohar, and Sherry Cave,-- established and operates a direct mail business and three telephone boiler-rooms.[1] The investigation has

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[1] A telephone boiler-room is an entity engaged in the business of making telephone sales calls. Generally, a telephone boiler-room employs a large number of telephone sales representatives, whose job is to make calls to a large number of potential customers in order to solicit business. These sales representatives are generally

revealed that thousands of potential customers were contacted each quarter throughout the United States. Many of these apparently fell victim to the lottery scheme.

2. BARBADOS OPERATION

When IDM became operational in Barbados, moving it's headquarters office to #4 Wildey Industrial Park, St Michael, Barbados. It has been determined that IDM also occupies two other locations in Barbados. The accounting office and some of IDM administrative functions are housed in an office located at 18 & 20 Webster Industrial Park, Shop #1 Wildey Street, St. Michael, Barbados. IDM also maintains a storage facility where old accounts are stored. This space is located at Pine Industrial Estate, Building # 3, St. Michael, Barbados.

On July 21, 1994,the United States Postal Service filed a complaint against Winning Advantage Australia and I.D.M. in Richmond, British Columbia, Canada. The complaint alleged Winning Advantage Australia and I.D.M. were engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or property by lottery, chance, or drawing within the meaning of Title 39, United States Code, Section 3005. Further, the United States Postal Service directed Winning Advantage Australia, I.D.M. and their agents, representatives, and employees to cease and desist any scheme for the distribution of

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supervised by one or more managers. The telephone boiler-rooms operated by the Subjects are described in greater detail below.

money or property by lottery through the United States mail in connection with advertising or offering entry in the Australian Lotto 6/45, Share the Wealth Group Play Plan, or any other lottery activity in which they sought remittance of money or property.

On August 4, 1994, Postmaster General, International Postal Affairs, General Post Office, Cheapside, Bridgetown, Barbados, was notified by the United States Postal Service that approximately 1,540 mailings addressed to IDM Corporation, No. 94600, 6871 Number 3 Road, Richmond, British Columbia, Canada, containing lottery matter, had been seized by United States Customs during a border search. The Barbados Postmaster was also informed that the importation of lottery matter into the United States was prohibited.

On August 17, 1994, the Barbados Postmaster directed Fred Collier, representative for IDM Direct Marketing Corporation, #4 Wildey Industrial Park, St. Michael, Barbados, to cease mailings of lottery material. The correspondence to Collier indicated recent mailings, containing lottery material, had been seized by the United States Postal Service. The Postmaster acknowledged they received a copy of a "Determination of non-mailability" letter which had been issued by the United States Postal authorities to IDM's parent company in Canada.

After being told to discontinue their illegal mailing activities, IDM switched from the Barbados Postal Service, as the company's primary mail service, to Federal Express, headquarted in Memphis, Tennessee. Further investigation revealed that IDM used, and

continues to use, Federal Express to mail packages, which consisted of lottery materials, to persons residing in the United States and Canada. On a number of occasions, the Barbados Customs Officials conducted random inspections of IDM's packages and discovered lottery materials. Once the package was opened, it was held by the Customs Official until an IDM representative retrieved it.

3. METHOD OF OPERATION

IDM's subsidiary, Assertive Marketing Services Inc., 10991 Shellbridge Way, Suite 409, Richmond, British Columbia, Canada, is managed by Avy Zohar, whose responsibilities for the lottery operation include: (1) collecting the mail at the mail receiving centers located in Canada; (2) pre-sorting mail based on promotion, and; (3) placing all the mail received in a box and mailing it, via Federal Express, to IDM in Barbados. Assertive Marketing Services, Inc. may open some mail, take out the complaints, and forward the remainder of the mail to IDM in Barbados. Assertive Marketing Services, Inc. may also open the mail and take out some payments made for lottery tickets.

ITA Enterprise Limited, 1281 Georgia Street West, Suite 101, Vancouver, British Columbia, Canada, is utilized by IDM for outbound and inbound telephone calls to customers from lists supplied by IDM to ITA Enterprise Limited. The lists of customers furnished ITA are derived from persons who have ordered lottery tickets before. It is believed that these lists contained thousands of U.S. citizens living in districts throughout the country.

Lotteries offered by IDM include United States Lotteries in New York and Pennsylvania. The lottery ticket resaler used by IDM to purchase lottery tickets in the United States is L & M Direct Marketing Inc., 14 Colgate Drive, Cherry Hill, New Jersey. L & M Direct Marketing Inc. is owned and operated by Milton Strassberg. L & M Direct Marketing Inc., has maintained an account with Federal Express account since July, 1987.

Intel Systems PTY Ltd., 19 Enoggera Terrace, Suite 2, Red Hill, Australia, operated by Peter O'Sullivan, supplies the Australian and German lottery tickets offered by IDM. Also, in July, 1994, IDM lost the merchant credit card account they had with Dinner's Club and American Express. As a result, Intel Systems PTY Ltd is being used by IDM to factor the credit card charges, when the victim charges a lottery purchase on Dinner's Club and/or American Express. A small number of Visa/Mastercard credit card charges are also being processed through a merchant credit card account operated by Intel Systems PTY Ltd.

Once the packages containing various orders and payments for lottery tickets, shipped via Federal Express from IDM's subsidiaries, arrives at the IDM headquarters office, #4 Wildey Industrial Park, St. Michael, Barbados, the orders are sorted by value and method of payment. They are then batched by total value. Once this has been accomplished, the orders are then processed by data entry. The orders and the credit card numbers are keyed into the computer and the checks are separated. These orders are then automatically released. The credit card charges are

sent to Assertive Marketing Services, Inc., and/or Intel Systems PTY Inc. for processing through their respective merchant credit card accounts.

4. **The False, Misleading And Deceptive Statements**

The evidence gathered to date indicates that many of the representations made by IDM and/or it's subsidiaries mail and phone solicitations have been false, misleading and/or deceptive.

Such representations have included the following:

* Telemarketers and mailings often lead customers to believe they had already won money;

* Mailings state that one of their other customers had just won a big lottery prize, as a means of inducing and encouraging the victim to begin or increase their purchases of lottery chances from IDM entities;

* Telemarketers and mailings often use--and are instructed to use--aliases to disguise their true identity;

* Mailings often state that lottery winnings were "tax-free" when in fact they were tax-free only with respect to the place where the lottery was held and were subject to substantial taxes for United States residents;

* Neither the telemarketers nor the mailings advise customers that it is illegal to purchase lottery tickets in the fashion advertised and that lotteries would refuse to pay winnings if they learned of the true nature of the purchases;

* Mailings state that the customer would receive statements of earnings, including a final notice and/or confirmation of their order;

* Mailings assert if the customer did not win at least $50,000.00, Johannes Von Volant would continue to produce at least 2,000 entries, at his own expense;

* Mailings state that customer's names appear on the winner's list;

* Mailings demonstrate that the customer has full rights to collect from special international lottery pool comprising 15 states;

* Mailings show that the customer will receive an official winning numbers list and official winnings to date;

* Mailings indicate the victim receives "tested to win lottery numbers";

* Telemarketers obtain the victim's bank name and their checking account number under the premise that the information is needed to deposit the victim's lottery winnings.

In addition to making false, misleading and deceptive statements, the Subjects also engaged in additional fraudulent practices to obtain money from customers. Customers were often encouraged to pay for lottery entries with a credit card (Visa, MasterCard, Dinner's Club, or American Express), although payment was also allowed by check. IDM often caused unauthorized billings and double billings to victims' credit card accounts. Many of these victims were elderly, easily confused individuals who were not aware that such unauthorized charges had to be promptly challenged in order to avoid liability for their payment. Sometimes multiple billings in identical amounts were charged against the accounts on the same day. The true scope of the harm to victims throughout the U.S. can only be determined after careful examination of I.D.M. documents from their Barbados headquarters.

5. Attempts To Conceal The Scheme

Carrying out the scheme described above requires the coordination of numerous functions, securing leads, printing and mailing the written solicitations, and telemarketing, as well as receiving and accounting for responses. During 1994 and/or 1995, IDM employees discussed strategies for scheduling and planning mailings in the United States in order to avoid detection and/or seizure of mailing materials by law enforcement authorities. When complaints arose, IDM attempted to conceal the problems in one of following ways: by creating and closing customer files, if necessary, to support the fact that IDM actually purchased tickets, and/or; by mailing or calling the complainant if they indicate they were under the

impression they won the lottery or more importantly if they have reported their complaint to the proper authorities. Under these circumstances, IDM employees advise the victims they did not win the lottery, and further that it was only a game of chance.

In addition, victims have stopped payment on checks and have also attempted to reverse credit card charges because they never received conformation letters detailing the numbers played, or they were told they won the lottery, but later learned they had not. These individuals were mailed multiple payment demand letters. These letters appeared as if they were mailed from PAYROLL COLLECTION SERVICES, New York City, New York, by L.H. Heinricht, Manager, NSF Collections.

These letters are mailed to the customers in an effort to force them to pay for the alleged lottery tickets purchased. The correspondence appears to be initiated by PAYROLL COLLECTION SERVICES, the collection company who represents I.D.M. However, information obtained indicates that there is no such company and I.D.M. actually mails these letters to victims in an effort to force them to pay for the lottery tickets, whether or not they have received them.

IDM offers various promotions including the most recent solicitations in the name of International Lottery Payout Services and Winning Advantage International. These promotions change periodically, causing customers to believe they are dealing with a different lottery operation.

IDM has established at least nine (9) mail receiving centers in the United States and an unknown number in Canada to send and/or receive lottery material. When in fact, IDM's offices are physically located in Canada at a different site. Also, the customer service telephone number provided in conjunction with the addresses given by IDM or it's subsidiaries is actually located in Barbados, and not in Canada, as it would seem. This enables IDM to further insolate themselves from detection by law enforcement authorities and/or discovery by dissatisfied customers.

IDM operates merchant credit card accounts under various names including WCLA Enterprises Ltd and solicits payments to be made to accounts in trade names such as CANUSA Ltd. These accounts are maintained in various banking institutions in Canada, Barbados and offshore banking institutions where dissatisfied customers and/or law enforcement lack the ability to easily recover the funds obtained fraudulently.

Finally, after being notified by the United States Postal authorities to discontinue any further importation of lottery material, IDM, it's subsidiaries or entities associated with IDM continue the activity by shipping the material Federal Express. Even though, the method of delivery changed, Alvin Moss and others continue their illegal enterprise by concealing the delivery of documents which, in some cases, include lottery material.

D. THE OFFENSES

DOJ believes that the conduct described above may violate the following United States criminal statutes, among others.

1. Mail Fraud

Title 18, United States Code, Section 1341 [mail fraud] provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . for the purpose of executing such scheme or artifice or attempting so to do . . . [uses the United States mails or causes them to be used] . . . shall be fined [not more than $250,000] or imprisoned not more than five years, or both.

The Subjects and others violated Section 1341 by using the mails to execxte the scheme to defraud described above.

2. Wire Fraud

Title 15, United States Code, Section 1343 [wire fraud] provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or

promises, transmits or causes to be transmitted, by means of wire [or] radio . . . communication in interstate or foreign commerce, any writings, signs, signals, pictures or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than five years, or both.

The Subjects and others violated Section 1343 by using interstate and foreign wire communications to execute the scheme to defraud described above.

3. Importing or Transporting Lottery Interests and Advertisements

Title 18, United States Code, Section 1301 [importing or transporting lottery interests] provides:

Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or, being engaged in the business of procuring for a person in 1 State such a ticket, chance, share, or interest in a lottery, gift, enterprise or similar scheme conduct by another State (unless that

business is permitted under an agreement between the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used for the purpose of procuring such a ticket, chance, share, or interest; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined under this title or imprisoned not more than two years, or both.

The Subjects and others violated Section 1301 by causing lottery ticket confirmations, lottery-related advertisements and other lottery-related matter to be brought into the United States of America and to be deposited with a common carrier for carriage in foreign or interstate commerce.

4. <u>Mailing Lottery Chances and Lottery Related Materials</u>

Title 18, United States Code, Section 1302 [mailing lottery tickets or related matter] provides:

Whoever knowingly deposits in the mail, or sends or delivers by mail:

Any letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to

represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or any share or chance in any lottery, gift enterprise, or scheme; . . . Shall be fined under this title or imprisoned not more than two years, or both.

The Subjects and others violated Section 1302 by depositing or causing others to deposit lottery chance confirmations, lottery-related advertisements and other lottery-related matter in the United States mail.

5. <u>Interstate Transportation of Wagering Paraphernalia</u>

Title 18, United States Code, Section 1953 [interstate transportation of wagering paraphernalia] provides:

Whoever . . . knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in . . . a numbers, policy, bolita, or similar game shall be fined under this title or imprisoned for not more than five years or both.

The Subjects violated Section 1953 when they carried or sent, or caused to be carried or sent in interstate or foreign commerce documents and records for use in lotteries and sweepstakes.

6. Illegal Gambling Businesses

Title 18, United States Code, Section 1955 [prohibition of illegal gambling businesses] provides:

> (a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.
>
> (b) As used in this section--
>
> (1) "illegal gambling business" means a gambling business which--
>
> (i) is a violation of the law of a State or political subdivision in which it is conducted;
>
> (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
>
> (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to . . . conducting lotteries . . . or selling chances therein.

The Subjects and others violated Section 1955 by selling lottery chances in the State of Washington in violation of Washington Revised Statutes Section 9.46.220 [Professional Gambling in the First Degree].

7. Smuggling

Title 18, United States Code, Section 545 [smuggling goods into the United States] provides, in pertinent part:

> Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law .... shall be guilty of a felony.

The Subjects and others violated Section 545 by causing lottery ticket confirmations, lottery-related advertisements and other lottery-related matter to be brought into the United States of America, by depositing it with Federal Express, a common carrier.

8. Money Laundering

Title 18, United States Code, Section 1956 [money laundering] provides:

(a)(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States

(A) with the intent to promote the carrying on of specified unlawful activity . . . shall be sentenced to a fine of not more than $500,000 . . . or imprisonment for not more than twenty years, or both.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

The Subjects violated Section 1956 when they transported or transferred, or conspired to transport or transfer, funds or monetary instruments between the United States and Canada, and between the United States and Barbados, which promoted specified unlawful activities, including violations of Sections 1341, 1343 and 1953 as described above.

PERSONS AND ENTITIES INVOLVED

The following persons and entities are believed to have been involved in the criminal acts described above.

A. SUBJECTS

* ALVIN IRWIN MOSS
Alias: AL MOSS
Birth date: February 12, 1933
Birthplace: Winnipeg, Manitoba
Citizenship: Canadian
Race: Caucasian
Sex: Male
Passport Number: Canada # TD243041
Driver's License Number: UNKNOWN
Social Insurance Number: UNKNOWN
Address: #3 Morgan's Cove
St. James Parish
Barbados

7202 Hudson
Vancouver, B.C.
Occupation: CEO
Business: IDM Direct Marketing Corp.
Address: #4 Wildey Industrial Park
St. Michael
Barbados
Telephone: (809) 427-7760; (809) 427-6065

* FREDERICK JOHN COLLIER
Birth date: May 20, 1954
Birthplace: Coquitlam, B.C.
Citizenship: Canadian
Race: Caucasian
Sex: Male
Passport Number: AP213027
Social Insurance Number: UNKNOWN
Address: 755 Sydney Ave.
Coquitlam

British Columbia
Canada V3K3K3
Occupation: Direct Marketing
Business: IDM Direct Marketing, Inc
#4 Wildey
St. Michael
Barbados
(809) 427-7760 (809) 427-6065
Business: World-Wide Enterprises Ltd
#490 - 10991 Shellbridge Way
Richmond, B.C.
Director of Marketing 5/88 - 3/93

* ROBERT EDWARD TUCKER
Birth date: October 10,1968
Birth place: Calgary, Alberta
Citizenship: Canadian
Race: UNKNOWN
Sex: Male
Passport Number: FV560076
Social Insurance Number: UNKNOWN
Address: 216 - 8120 Colonial Drive
Richmond, B.C.
Canada V7CYV2
Occupation: MIS Manager
Business: IDM Direct marketing Corp.
#4 Wildey Industrial Park
St. Michael
Barbados
Business: World Wide Enterprises, Ltd
Richmond, B.C.
Canada
1/88 to present

* SHERRIE-LEE DOREEN CAVE
Birth date: November 27, 1964
Birthplace: Red Deer, Alberta
Citizenship: Canadian
Race: Caucasian
Sex: Female
Passport Number: FV563122
Driver's License Number: UNKNOWN
Social Insurance Number: UNKNOWN
Address: 8691 Pigott Road
Richmond, B.C.
Canada V7A2C3
Occupation: Director of Planning and Analysis
Business: IDM Direct Marketing Corp.
#4 Wildey Industrial Park
St. Michael
Barbados
Business: Word Wide Enterprises Ltd
Richmond, B.C.
Direct Marketing 9/86 to present

* KENNETH BROWN MILLAN
Date of Birth: January 16, 1949
Birth Place: Edinburgh
Scottland
Citizenship: British
Race: Caucasian
Sex: Male
Passport Number: B494656, U.K.
Driver's License Number: UNKNOWN
Social Insurance Number: UNKNOWN
Address: 11251 Frigate Court
Richmond, B.C.
Canada
Occupation: Chief Executive Officer

Business: IDM Direct Marketing Corp.
#4 Wildey Industrial Park
St. Michael
Barbados
Business: World Wide Enterprises Ltd
Shellbridge
Richmond, B.C.
Canada
Chief Executive Officer 10/89 - UNKNOWN

* WINSTON BEST
Birth date: UNKNOWN
Birthplace: UNKNOWN
Citizenship: UNKNOWN
Race: UNKNOWN
Sex: Male
Passport Number: UNKNOWN
Address: Lot 12 Applehall
St. Philip
Barbados
(809) 423-5677
Occupation: Financial Controller
Business: IDM Direct Marketing Corporation
#4 Wildey Industrial park
St. Michael
Barbados

* MARCIA I.D. NURSE
Birth date: UNKNOWN
Birthplace: UNKNOWN
Citizenship: UNKNOWN
Race: UNKNOWN
Sex: Female
Passpost Number: UNKNOWN

Address: Apt. #1
No. 53 Rendezvous Ridge
Christ Church
Barbados
(809) 436-9070
Occupation: Operations Administrator
Business: IDM Direct Marketing Corporation
#4 Wildey Industrial Park
St. Michael
Barbados

B. ENTITIES

[See table below]

Name of Company and D/B/A's	Place of Incorp.	Date of Incorp.
World Wide Forest Industries Ltd dba, World Wide Enterprises Ltd #120 - 11191 Voyageur Way, Richmond, British Columbia, Canada	Canada	9/25/74
Assertive Marketing Services Inc. Box 55, #800 - 1090 W. Georgia St. Vancourver, British Columbia, Canada	Canada	5/25/94
International Direct Marketing Ltd dba, IDM #204 - 1651 Commercial Drive, Vancouver, British Columbia, Canada	Canada	11/21/92
Granada Mailrite Services #210 - 8211 Ackroyd Road, Richmond, British Columbia, Canada	Canada	5/7/85

Name of Company and D/B/A's	Place of Incorp.	Date of Incorp.
A & R Moss Investments dba, Armos Holdings Ltd 19th Floor - 885 West Georgia St., Vancouver, British Columbia, Canada	Canada	10/31/89
WCLA Enterprise Ltd Box 55, #800 - 1090 West Georgia St., Vancouver, British Columbia, Canada	Canada	12/4/93
Vanpro Enterprises Ltd #270 - 10811 Cambie Road, Richmond, British Columbia, Canada	Canada	7/12/93
World Wide Holdings Ltd #120 - 11191 Voyageur Way, Richmond, British Columbia, Canada	Canada	9/28/83

Name of Company and D/B/A's	Place of Incorp.	Date of Incorp.
Worldwide Winners Enterprises Ltd #210 - 8211 Ackroyd Road, Richmond, British Columbia, Canada	Canada	12/9/91
319739 B.C. Ltd dba, Kenaston International Enterprises Ltd #210 - 8211 Ackroyd Road, Richmond, British Columbia, Canada	Canada	12/86
Fortunes Unlimited Enterprises Ltd Box 55, #800 - 1090 West Georgia St., Vancouver, British Columbia, Canada	Canada	5/12/92
IDM Direct Marketing Corp. #4 Wildey Industrial Park St. Michael, Barbados	Barbados	6/4/92

PURPOSE FOR WHICH ASSISTANCE IS REQUIRED

Although the Subjects have violated U.S. law by selling lottery chances through the mail and facilitated by use of a common carrier, the extent of the fraud involved in this case is not fully known. The Department of Justice is aware that millions of dollars have been coming into IDM annually while only thousands have been paid out. This raises three main questions regarding the fraud scheme that can only be answered after close examination of IDM documents found at various locations in Barbados: 1) Did IDM buy the lottery tickets as promised in their mailings?; 2) Were any of the tickets winners?; and 3) Who were the victims who should have won as a result of purchasing lottery chances but never received payment? Answers to these questions will provide sufficient evidence to effectively pursue fraud charges as well as claims of restitution and asset forfeiture.

The United States requests the following assistance from Barbados, which assistance is necessary to prove the criminal violations set forth above.

B. SEARCHES OF PREMISES CONTROLLED BY TARGETS

You are requested to search the following premises for the documents, records and other items described in Attachment A hereto:

1. The business premises of IDM and all other premises controlled by Alvin Moss or his agents, located at #4 Wildey Industrial Park, St.

Michael, Barbados, 18 & 20 Webster Industrial Park, Shop #1 Wildey Street, Street Michael, Barbados and Pine Industrial Estate, Building #3, St. Michael, Barbados including without limitation, offices, reception areas, work areas, and storage areas.

2. The residence of Alvin Moss, located at #3 Morgans Cove, St. Michael, Barbados.

B. BANK RECORDS

You are requested to obtain the documents, records and other items described in Attachment B hereto from the following banks and financial institutions for the following accounts:

1. All accounts at Royal Bank of Canada, Barbados.

2. All accounts at the Barbados National Bank, Barbados.

3. All accounts at the Caribbean Limited, Barbados.

4. All accounts at any bank or other financial institution located in Barbados in the name of or controlled by any person or entity (or d/b/a of the same) listed in Part II of this request. Such accounts are not currently known to the United States, but may be reflected in documents seized from the premises described above.

C. TESTIMONY

Please identify the officers/ agents and employees of any bank holding any account described in the preceding subsection B who opened the accounts described in the preceding paragraph or who have personal knowledge of any transactions reflected in the records of such accounts. Please interview the officers and employees so identified and determine

1. The identity of the person(s) who opened each account;

2. The circumstances under which each account was opened;

3. The nature, structure and terms of each account;

4. The disposition of the funds in each account; and

5. The identity of the person(s) ordering such disposition.

D. REQUEST FOR NOTICE

Prior to any searches or interviews, please make contact with:

Paul Garner
Legal Attache
American Embassy
Bridgetown, Barbados
(809) 437-7770

It is requested that United States investigators be permitted to accompany law enforcement officers of Barbados during the execution of searches and the interviews of Subjects and witnesses in Barbados, so as to be readily available to the Barbados officers for consultation concerning the evidence and information sought and other matters relating to the investigation leading to this request for assistance.

IV. TIME CONSTRAINTS

This case is in the investigative stage. The Subjects continue to conduct operations and to victimize residents of the United States. Moreover, the Subjects may have terminated operations in Canada and may have destroyed documents and records located in Barbados. There is reason to believe that the Subjects will destroy additional documents and records in Barbados. To prevent the loss of important evidence and to bring a prompt end to this criminal scheme, we would appreciate immediate action. We stand ready to assist you in any manner possible.

June 27, 1996
DATE

/s/ Thomas G. Snow
Tom Snow
Deputy Director
Office of International Affairs
Criminal Division

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, the undersigned, _____, with the understanding that I am subject to criminal penalty under the laws of Barbados for an intentionally false declaration, declare that I am employed by or associated with _____ in the position of _____ and by reason of my position am authorized and qualified to make this declaration.

I further declare that the documents attached hereto are originals or true copies of records which:

1. Were made at or near the time of the occurrence of the matters set forth therein, by (or from information transmitted by) a person with knowledge of those matters;

2. Were kept in the course of regularly conducted business activity;

3. Were made by the said business activity as a regular practice; and,

4. If not original records, are duplicates of original records.

The originals or duplicates of these records are maintained in the country of Barbados.

Date of Execution: _____
Place of Execution: _____
Signature: _____

ATTACHMENT A: DOCUMENTS AND RECORDS TO BE SEIZED FROM PREMISES CONTROLLED BY THE TARGETS

A. DEFINITIONS

1. The term "document" includes each and every writing of whatever nature, whether an original, a draft, or a copy, however produced, reproduced or stored, whether manually, mechanically, electronically, electromagnetically or otherwise, and each and every tangible thing from which information can be processed or transcribed, including without limitation letters, telegrams, telexes, facsimiles, contracts, agreements, memoranda, receipts, calendars, diaries, appointment books, personal files, telephone messages and message logs, notes, schedules, work sheets, books, pamphlets, summaries, proposals, photographs, ledgers, statements, files, invoices, billing information, notebooks, verifications of assets, adding machine tapes, financial statements and other compilations of financial data, work papers, bank statements and associated bank records, checks, records of wire transfers or cash payments, charts, graphs, research materials, prospectuses, registration statements, and computer printouts and other computer generated writings, or any similar item.

2. The term "record" includes all tangible, written or non-written forms of expression including partial, preliminary and completed versions, however created, produced or stored, whether electronically, electromagnetically or otherwise, including, but not limited to, tape recordings, video recordings, magnetic tapes, disks, diskettes, disk packs and other electronic

media, microfilm, microfiches, and storage devices, or any similar item.

B. DOCUMENTS TO BE SEIZED

Please seize or otherwise obtain the following documents and records:

1. All documents, records and other items that relate to any of the persons or entities set forth in Section II of the attached request for assistance, including without limitation Alvin Moss, Dick Titterington, Geof Feldman, Avy Zohar, Winston Best, Sherrie Cave, Fred Collier, Robert Tucker, Marcia Nurse, IDM Direct Marketing, Assertive Marketing Services, International Lottery Payout Services and Winning Advantage International.

2. All documents, records and other items that relate to the sale of, purchase of, payment for, or payment of proceeds from any lottery or prize giveaway, chance or entry.

3. All documents, records and other items that relate to the marketing of any lottery or sweepstakes ticket, chance or entry, whether by telephone, mail or otherwise.

4. All documents, records and other items that relate to any customer or other complaints.

5. All mailing lists, customer lists, accounts payable or similar lists reflecting customers or potential customers.

6. All documents, records and other items that relate to any bank account or asset in the name of, under the control of, for the benefit of Alvin Moss, Dick Titterington, Geof Feldman, Avy Zohar, Winston Best, Sherrie Cave, Fred Collier, Robert Tucker, Marcia Nurse, IDM Direct Marketing Inc., Assertive Marketing Services, International Lottery Payout Services, Winning Advantage International, or any other entity or person listed in Section II of the attached request for assistance, including without limitation:

a. Account opening documents, including agreements, financial statements, authorized signatures, and modifications to opening account documents;

b. Account statements;

c. Cancelled checks (both sides);

d. Cashier's checks (both sides) and receipts for cashier's checks;

e. Bank wire advances, statements, transfers and transmittal notices;

f. Deposit slips and copies of items deposited;

g. Debit and credit advances and memoranda;

h. Notices of transfers (between accounts and otherwise);

i. Letters of credit;

j. Line of credit agreements;

k. Service agreements;

l. Correspondence and memoranda;

m. Powers of attorney;

n. Overdraft notices and officer approval slips;

o. Signature cards;

p. Time and/or demand notes;

q. Credit references, inquiries and memoranda; and

r. Safe deposit box rental records, including application signatures and entry records.

s. Credit card merchant account records, including any charge back records, any complaints;

ATTACHMENT B: DOCUMENTS AND RECORDS TO BE OBTAINED FROM BANKS

A. DEFINITIONS

1. The term "document" includes each and every writing of whatever nature, whether an original, a draft, or a copy, however produced, reproduced or stored, whether manually, mechanically, electronically,

electromagnetically or otherwise, and each and every tangible thing from which information can be processed or transcribed, including without limitation letters, telegrams, telexes, facsimiles, contracts, agreements, memoranda, receipts, calendars, diaries, appointment books, personal files, telephone messages and message logs, notes, schedules, work sheets, books, pamphlets, summaries, proposals, photographs, ledgers, statements, files, invoices, billing information, notebooks, verifications of assets, adding machine tapes, financial statements and other compilations of financial data, work papers, bank statements and associated bank records, checks, records of wire transfers or cash payments, charts, graphs, research materials, prospectuses, registration statements, and computer printouts and other computer generated writings, or any similar item.

2. The term "record" includes all tangible, written or non-written forms of expression including partial, preliminary and completed versions, however created, produced or stored, whether electronically, electromagnetically or otherwise, including, but not limited to, tape recordings, video recordings, magnetic tapes, disks, diskettes, disk packs and other electronic media, microfilm, microfiches, and storage devices, or any similar item.

B. DOCUMENTS TO BE OBTAINED

Please seize or otherwise obtain the following documents and records:

All documents, records and other items that relate to any bank account or asset in the name of, under the

control of, for the benefit of Alvin Moss, Dick Titterington, Geof Feldman, Avy Zohar, Winston Best, Sherrie Cave, Fred Collier, Robert Tucker, Marcia Nurse, IDM Direct Marketing Inc., Assertive Marketing Services, International Lottery Payout Services, Winning Advantage International, or any other entity or person listed in Section II of the attached request for assistance, including without limitation

a. Account opening documents, including agreements, financial statements, authorized signatures, and modifications to opening account documents;

b. Account statements;

c. Canceled checks (both sides) ;

d. Cashier's checks (both sides) and receipts for cashier's checks;

e. Bank wire advances, statements, transfers and transmittal notices;

f. Deposit slips and copies of items deposited;

g. Debit and credit advances and memoranda;

h. Notices of transfers (between accounts and otherwise);

i. Letters of credit;

j. Line of credit agreements;

k. Service agreements;

l. Correspondence and memoranda;

m. Powers of attorney;

n. Overdraft notices and officer approval slips;

o. Signature cards;

p. Time and/or demand notes;

q. Credit references, inquiries and memoranda; and

r. Safe deposit box rental records, including application signatures and entry records;

s. Any merchant credit card account records, including any charge back information, any complaints.

EXHIBIT B

[See foldout pages]

Best Available Copy

BARBADOS

No 1188 of 1996

ATTORNEY-AT-LAW
ATTORNEY GENERAL'S OFFICE
SIR FRANK WALCOTT BLDG
CULLODEN ROAD
ST MICHAEL

EXHIBIT B

IN THE HIGH COURT OF JUSTICE

CIVIL DIVISION

IN THE MATTER OF THE ADMINISTRATIVE JUSTICE ACT CHAPTER 109B OF THE LAWS OF BARBADOS

IN THE MATTER OF THE JUDICIAL REVIEW (APPLICATION) RULES, 1983

IN THE MATTER OF THE ISSUANCE AND EXECUTION OF SEARCH WARRANTS AT THE PREMISES OF I.D.M. DIRECT MARKETING CORPORATION

IN THE MATTER OF AN APPLICATION BY I.D.M. DIRECT MARKETING CORPORATION

BETWEEN:

I.D.M. DIRECT MARKETING CORPORATION — APPLICANT

AND

THE ATTORNEY GENERAL OF BARBADOS — 1ST RESPONDENT

THE COMMISSIONER OF POLICE — 2ND RESPONDENT

ORDER

Before the Honourable Mr Justice Sherman Moore
High Court Judge, on the 17th day of November and the 20th day of November 1997

Entered on the 18th day of March 1998.

1961-me-48338-BAR-15

MAR 19 20 1998

UPON HEARING the Solicitor General of Barbados (Acting) Miss Jennifer C Edwards with Miss Michelle Weekes , Senior Crown Counsel (Acting) for the Respondent in issues arising in limine and Dr R.L. Cheltenham Q.C., in association with Mr Kerrie Symmonds of Counsel for the Applicant:

IT IS HEREBY ORDERED as follows:

1. That the Attorney General is not a proper Party to these proceedings and is accordingly discharged.
2. That the breaches of the Judicial Review (Application) Rules 1983 in this case are fundamental therefore the Application for Judicial Review is struck out.
3. That the interim Order in this matter entered on the 9th day of August 1996 is discharged.
4. That costs be awarded to the Respondents fit for two Counsel to be agreed or taxed.

Dated this 18th day of March 1998.

CERTIFIED A TRUE COPY
LEGAL ASSISTANT

Ag Dep REGISTRAR

BARBADOS
No 1188 of 1996

IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION

IN THE MATTER OF THE ADMINISTRATIVE JUSTICE ACT CHAPTER 109B OF THE LAWS OF BARBADOS

IN THE MATTER OF THE JUDICIAL REVIEW (APPLICATION) RULES 1983

IN THE MATTER OF THE ISSUANCE AND EXECUTION OF SEARCH WARRANTS AT THE PREMISES OF I.D.M. DIRECT MARKETING CORPORATION

IN THE MATTER OF AN APPLICATION BY I.D.M. DIRECT MARKETING CORPORATION

BETWEEN:

I.D.M. DIRECT MARKETING CORPORATION

AND

THE ATTORNEY GENERAL OF BARBADOS

THE COMMISSIONER OF POLICE

ORDER

Attorney-at-Law for the Respondents